135-507

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 278.

WILLIAM C. WEST, PLAINTIFF IN ERROR,

vs.

JOHNSON N. CAMDEN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED DECEMBER 21, 1886.

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1 UNITED STATES OF AMERICA, } *To wit:*
District of Maryland, }

At a circuit court of the United States for the fourth circuit in and for the district of Maryland, begun and held at the city of Baltimore, on the first Monday of April, being the sixth day of the same month, in the year of our Lord one thousand eight hundred and eighty-five—present, the Honorable Hugh L. Bond, circuit judge; Thomas J. Morris, judge Maryland district; Archibald Stirling, Jr., Esquire, attorney; John M. McClintock, Esquire, marshal; James W. Chew, clerk—among other were the following proceedings, to wit:

WILLIAM C. WEST }
vs.
JOHNSON N. CAMDEN. }

2 *Titling. Filed* 20 *April*, 1883.

In the United States Circuit Court for the District of Maryland.

WILLIAM C. WEST, a Citizen of the City of Baltimore, State of Maryland, }
vs.
JOHNSON N. CAMDEN, a Citizen of the State of West Virginia. }

Case; damages, $50,000.

Mr. Chew, clerk, &c.:

Issue summons in this case and make the writ returnable to the May R. day, 1883.

S. T. WALLIS,
E. CALVIN WILLIAMS,
Att'ys for Pl't'f.

Upon which said titling the writ of the United States of America of summons issues against the said defendant in form following, to wit:

3 *Summons.*

THE UNITED STATES OF AMERICA, } *To wit:*
District of Maryland, }

The President of the United States of America to the marshal for the Maryland district, Greeting:

We command you that you summon Johnson N. Camden, if he be found in your district, to appear before the judges of the circuit court of the United States of America for the fourth circuit in and for the district of Maryland, at the United States court-room, in the city of Baltimore, on the first Monday of May next, to answer unto the action of William C. West, and how you shall execute this

precept you make known to us in our circuit court for the district aforesaid, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court, this 20th day of April, in the year of our Lord one, thousand eight hundred and eighty-three.

Issued 20th day of April, 1883.

JAS. W. CHEW, *Clerk.*

Marshal's Return.

"Summoned April 20, 1883, at 12.35 p. m. John M. McClintock, U. S. marshal."

Appearance.

11th May, 1883, the defendant appears in court here, by Marshal & Hall, Esquires, his attorneys. Rule *nar.*

4 *Declaration. Filed* 22 *May,* 1883.

In the Circuit Court of the United States in and for the District of Maryland.

WILLIAM C. WEST
vs.
JOHNSON M. CAMDEN.

William C. West, who is a citizen of the State of Maryland, by S. Teackle Wallis and E. Calvin Williams, his attorneys, sues Johnson N. Camden, who is a citizen of the State of West Virginia, for money payable by the defendant to the plaintiff.

1. For goods bargained and sold by the plaintiff to the defendant.

2. And for work done and materials provided by the plaintiff for the defendant at his request.

3. And for money lent by the plaintiff to the defendant.

4. And for money paid by the plaintiff to the defendant at his request.

5. And for money received by the defendant for the use of the plaintiff.

6. And for money found to be due from the defendant to the plaintiff on accounts stated between them.

7. And for that the said defendant, in or about the month of December, A. D. 1877, engaged the said plaintiff to serve
5 as an officer, to wit, as vice-president, of the Baltimore United Oil Company of Baltimore County, a corporation incorporated under the laws of the State of Maryland, in which said defendant was largely interested, and promised and undertook, in consideration of the said plaintiff's agreement to serve as such officer and of the conveyance and transfer to the said company of the property used by the partnership firm of C. West & Sons (of which at that time said plaintiff was a member) in its business of refining petro-

leum and dealing in the same and its products and the consolidation of the said business of the said firm with that of the said company, which was greatly beneficial to said company and to said defendant, that the said plaintiff should be retained permanently in his said position as such officer at and for the salary of at least five thousand dollars ($5,000.00) per annum, the expected fulfillment of said promise and undertaking on the part of said defendant being a material part of the consideration of said transfer and consolidation and additional to the money consideration for the same; that said transfer and consolidation were shortly thereafter effected and carried out by said plaintiff and the other members of said firm according to and in fulfillment of the terms of the agreement made between said plaintiff and said defendant in the premises; that said plaintiff undertook and faithfully discharged the duties of said office, and was duly paid for so doing, in accordance with and in fulfillment of the terms of said agreement, from the time when his services were engaged as aforesaid until the fif-
6 teenth day of January, A. D. 1883, at which time the said plaintiff was removed from his position as vice-president of the said Baltimore United Oil Company of Baltimore County, without any good and sufficient reason therefor, in violation of the promise and undertaking of said defendant as aforesaid and notwithstanding that the said plaintiff was and tendered himself to said company and to said defendant as ready and willing to continue the performance of his duties as such officer; whereby and in consequence and by reason of the said failure of the defendant to comply with the terms of the agreement entered into and made by him as aforesaid the said plaintiff has been greatly damaged and has suffered great detriment and loss.

8. And for that the said plaintiff, in or about the month of December, in the year 1877, was a member of the firm of C. West & Sons, which said firm was at that time engaged in a large and lucrative business in refining and selling petroleum and its products in the city and county of Baltimore, said business being likewise permanently established and of great prospective value, and that at or about that time or shortly prior thereto the said defendant, by his representations and promises, as hereinafter mentioned, induced the said plaintiff to unite with the other members of said firm in transferring to the Baltimore United Oil Company of Baltimore County, a corporation incorporated under the laws of the State of Maryland, and in which said defendant was largely interested, all the interests of the said firm and the business conducted by
7 it, together with the good will of the same, and in selling and conveying to the said company all the property, buildings, and appurtenances occupied and used by said firm in its said business, and to thereby consolidate the said business theretofore conducted by said firm with the business of said company, the expected fulfillment of said representations and promises so made by said defendant being a material part of the consideration of said transfer, conveyance, and consolidation, in addition to the money consideration given therefor; that in and by his said promises and represen-

tations said defendant undertook and agreed on his own liability that said plaintiff should be appointed to the position of vice-president of said company and retained in such position and office permanently at and for the salary of not less than five thousand dollars ($5,000.00) per annum; that said defendant has, however, failed to fulfill and carry out the promises and undertakings so made by him, notwithstanding that the said plaintiff faithfully discharged the duties of said office from the time when he was appointed to the same until the fifteenth day of January, A. D. 1883, and in all respects duly complied with the terms of the agreement entered into between him and said defendant in the premises, but that on the contrary, in violation of the promises and undertakings made by said defendant as aforesaid and of the terms of said agreement, the said plaintiff was, on or about said last-mentioned date, without cause, removed from his said office of vice-president of the said Baltimore United Oil Company, although said plaintiff was ready
8 and willing to continue to perform his duties as such officer and so tendered himself to said defendant and said company; whereby and in consequence and by reason of said failure on the part of said defendant to comply with the terms of said agreement and by reason of the violation of the said promises and undertakings so made by said defendant as aforesaid the said plaintiff has been greatly damaged and has suffered great detriment and loss.

9. And for that, in or about the month of December, in the year 1877, the plaintiff was a member of the firm of C. West & Sons, which said firm was at that time doing a large and profitable business as refiners of petroleum and dealers in the same and its products, said business being likewise permanent and of large prospective value, and that about said date or shortly prior thereto the said defendant engaged the services of the said plaintiff to be rendered to the Baltimore United Oil Company of Baltimore County, a corporation then recently formed or about to be formed and in which and the formation of which said defendant was largely interested, and promised said plaintiff that he should be appointed to a prominent and lucrative position as officer of said company, and should be retained permanently in such position in consideration of the said plaintiff's agreeing to accept and retain such position and of his uniting with the other members of said firm in the assignment and transfer to the said company of the property used by said firm in its said business and the consolidation of its said business
9 with that of the said company; that said assignment and consolidation were of great value and importance to said company and said defendant and were effected and carried out by the said plaintiff and the other members of said firm in accordance with the terms of the agreement entered into between the said plaintiff and said defendant in the premises; that pursuant to said agreement the said plaintiff was thereafter appointed to the position of vice-president of said company and remained in that position until the fifteenth day of January, A. D. 1883, at which time he was removed therefrom without cause, contrary to the terms of the said agreement and in violation of the promise and undertaking so made

by the defendant as aforesaid, although said plaintiff was ready and willing and tendered himself as ready and willing to continue in said office and faithfully discharge the duties thereof; whereby and in consequence and by reason of said failure on the part of said defendant to comply with the terms of said agreement and by reason of the violation of the promises and undertakings so made by said defendant as aforesaid the said plaintiff has been greatly damaged and has suffered great detriment and loss.

10. And for that, in or about the month of December, A. D. 1877, the said plaintiff was a member of the firm of C. West & Sons, which said firm was at that time engaged in a large and profitable business as refiners of petroleum and dealers in the same and its products, together with all the kinds of business relating to and connected with the same, which said business was permanent and of large present and prospective value; that the said defendant, at that time or shortly prior thereto, approached the said plaintiff and the other members of said firm with the view of inducing them to convey to a new company, then about to be formed and established through the instrumentality of said defendant and in which and the formation of which he was largely interested, all the property and interests of said firm connected with their said business, the said firm being consolidated with said company and its said business absorbed by said company, and said transfer and consolidation being of great value, and indeed necessity, to said company and to said defendant; that as a material part of the consideration for such assignment and of said plaintiff's retiring from said business at defendants request and joining in the transfer and consolidation aforesaid, the said defendant undertook, promised, and agreed with the said plaintiff that he, the said plaintiff, should have and permanently retain in said company a prominent and lucrative position satisfactory to said plaintiff; that said conveyance and consolidation were effected and carried out at defendant's request, in accordance with the terms of said agreement, by a proper assignment to the Baltimore United Oil Company of Baltimore County, which was formed and incorporated under the laws of the State of Maryland about that time, and in which said defendant was so interested as aforesaid; that, pursuant to said agreement, the said plaintiff was appointed vice-president of the said company at a salary of five thousand dollars ($5,000.00) per annum (the same being satisfactory to said plaintiff), which was increased from time to time by mutual agreement between the plaintiff and the defendant; that said plaintiff held said position from the time of his appointment, to wit, the fourteenth day of December, A. D. 1877, until the fifteenth day of January, A. D. 1883, at which time, although he tendered himself ready to retain the same and faithfully to discharge the duties thereof, he was removed from his said position as vice-president of the said company without cause and against his consent and protest and has thereby lost the same and has not been paid or tendered in payment his salary since that time, nor has he been appointed to any other prominent, lucrative, or satisfactory office in the said Baltimore United Oil Company, but, on the contrary, has

been altogether excluded therefrom, and the said defendant has refused to make him any compensation for the same or in any way to remove or repair the wrong and injuries so done by him to said plaintiff, although often requested so to do; whereby and by reason and in consequence of the failure of the defendant to fulfill his said promises and undertakings and of his violation of the terms of said agreement the said plaintiff has been greatly damaged and has suffered great detriment and loss.

And the plaintiff claims fifty thousand dollars ($50,000.00).

S. TEACKLE WALLIS,
E. CALVIN WILLIAMS,
Att'ys for Pl'ff.

11½ Which said declaration is thus endorsed, to wit: Service admitted this 22nd day of May, A. D. 1883. Marshall & Hall, att'ys for def't. Rule plea.

Pleas. Filed 2 *June*, 1883.

In the U. S. Circuit Court, Maryland District.

WM. C. WEST
vs.
JOHNSON M. CAMDEN.

And the said Johnson N. Camden, the defendant in this action, by Marshall & Hall, his attorneys, says, for a first plea, that he never was indebted as alleged, and for a second plea says that he did not promise as alleged.

MARSHALL & HALL,
Attorneys for Def't.

Endorsed: Service admitted June 2nd, 1883. E. Calvin Williams, att'y for plaintiff.

12 *Agreement of Counsel and Amendment to Declaration. Filed 20th December*, 1883.

In the U. S. Circuit Court, &c.

WILLIAM C. WEST
vs.
JOHNSON N. CAMDEN.

It is desired by the plaintiff to amend the declaration heretofore filed in this case by inserting the following just before the *ad damnum* clause, in the 7th, 8th, 9th, and 10th counts of said declaration, the same to be considered as if originally so included in said counts of said declaration:

That at the time of making his promise and undertaking aforesaid and of the acceptance of the same and the performance and ex-

ecution by the plaintiff, on the faith and consideration thereof, of his part of the agreement aforesaid, the defendant was able and proposed and continued to be able, and represented and guaranteed to the plaintiff that he was and would continue to be able, lawfully and properly to procure for and continue to the plaintiff the office and employment aforesaid in the service of the said Baltimore United Oil Company of Baltimore County, on the terms as to salary hereinbefore set forth, according to his, the said defendant's, said promise and undertaking, which said office and employment it was for the interest and benefit of said company that the plaintiff
13 should have and continue to fill at the said salary; and the said defendant, down to and at the time of the removal of the plaintiff from said office and from his employment in the service of said company as aforesaid, was and always continued to be able, lawfully and properly and to the interest and advantage of said company, and with and by its full consent and approval and that of its stockholders, to retain the plaintiff or cause or procure him to be retained at said salary and in the employment of said company, in fulfillment of his, the said defendant's, undertaking aforesaid; but the said defendant, nevertheless, in wilful and intended violation of his said promise and undertaking, failed and refused so to do, and caused and procured the said plaintiff to be removed from said office and from all employment in the service of said company, and to be deprived of all salary or emolument therefrom.

S. TEACKLE WALLIS,
E. CALVIN WILLIAMS,
Att'ys for Pl'ff.

It is agreed that the within amendment be considered as inserted, as therein specified, and service of copy is hereby admitted.

MARSHALL & HALL,
Att'ys for Defendant.

14 The said cause so standing was continued from term to term until the April term, 1885, of said court.

And thereupon the said plaintiff, by his said attorneys, joins issue upon the pleas of the defendant above pleaded.

Pleas Withdrawn and Demurrer to the Declaration.

On the 21 May, 1885, the said defendant, by his attorneys, by leave of the court, withdraws his pleas above pleaded and demurs to the declaration.

Which said demurrer, being seen and heard, is by the court here overruled, with leave to the defendant to plead over.

Whereupon the said defendant, by his said attorneys, refiles the same pleas above pleaded, and the said plaintiff, by his attorneys aforesaid, joins issue upon the said pleas.

Verdict.

Whereupon, for trying the issues above joined between the parties, the following-named persons, from the list of petit jurors drawn and returned to the court here in pursuance of the statute in such case made and provided, being called, come—that is to say, Robert W. Chase, Charles D. Hiss, James Crowley, John Warfield, John A. Jenness, John A. Hilberg, Jesse T. Higgins, William H. Miller, Lewis F. Bowen, James Towles, William H. Cathcart, Solomon King, who, being empanneled and sworn to say the truth in the premises, upon their oaths do say that the said defendant did not undertake and promise in manner and form as the said plaintiff hath above against him complained.

Judgment.

Therefore it is considered by the court here that the said plaintiff take nothing by his said writ, but that he be in mercy for his false complaint, and that the said defendant go thereof without day, &c. It is also considered by the court here that the said defendant do recover against the said plaintiff the sum of thirty-one dollars and fifty-five cents for his costs and charges by him about his defence in this behalf sustained, to the said defendant by the court here now adjudged, and that the said defendant have thereof his execution.

MEMORANDUM.—Verdict and judgment were rendered in the above case for the defendant on the 28th day of May, 1885.

Order Extending Time to File Bills of Exception. Filed 27 Oct., 1885.

U. S. Circuit Court, District of Maryland.

WILLIAM C. WEST
vs.
JOHNSON N. CAMDEN.

Upon the application of the plaintiff, and by the consent of both parties by their counsel, it is ordered that the time for the presentation and signing and sealing of the bill of exceptions in this case be extended to and during the November term, 1885, of the said circuit court.

Octo. 27th, 1885.

THOS. J. MORRIS, *Judge.*

Order Extending Time to File Bills of Exception. Filed 2nd April, 1886.

By agreement of counsel for plaintiff and defendant the time for the presentation and signing and sealing of the bill of exceptions in this case is extended sixty days from this date, April 2nd, 1886.

THOS. J. MORRIS, *Judge.*

17 *Order Extending Time to File Bills of Exception. Filed 1st June, 1886.*

In the U. S. Circuit Court for Maryland.

WM. C. WEST
vs.
JOHNSON N. CAMDEN.

It is hereby agreed that the time for filing the bill of exceptions in the above-entitled case be extended until the 15th day of June, 1886.

E. CALVIN WILLIAMS,
For Plaintiff.
MARSHALL & HALL,
For Defendant.

Upon the foregoing agreement of counsel — ordered that the time for filing the bill of exceptions in this case be extended until the 15th day of June, 1886.

THOS. J. MORRIS, *Judge.*

18 *Order Extending Time to File Bills of Exceptions. Filed 15th June, 1886.*

In the U. S. Circuit Court for Maryland.

WILLIAM C. WEST
vs.
JOHNSON N. CAMDEN.

It is agreed that the time for filing the bills of exceptions in the above-entitled case be extended to the first day of July, 1886.

E. CALVIN WILLIAMS,
For Plaintiff.
MARSHALL & HALL,
For Defendant.

Ordered by the court this 15th day of June, 1886, upon the foregoing agreement of counsel, that the time for filing the bills of exceptions in this case be, and hereby is, extended to the 15th day of July, 1886.

THOS. J. MORRIS, *Judge.*

19 *Order Extending Time to File Bills of Exceptions. Filed 14th July,* 1886.

In the U. S. Circuit Court for the District of Maryland.

WM. C. WEST
vs.
JOHNSON N. CAMDEN.

It is agreed that the time for filing the exceptions in the above-entitled case be extended to the tenth day of October, 1886.

MARSHALL & HALL,
For Defendant.
E. CALVIN WILLIAMS,
For Plaintiff.

Ordered by the court this 14th day of July, 1886, that the time for filing said bill of exceptions be extended to the tenth day of October, 1886, in accordance with the foregoing agreement of counsel.

HUGH L. BOND,
Circuit Judge.

20 *Bill of Exceptions. Filed 9th October,* 1886.

In the Circuit Court of the United States for the District of Maryland.

WILLIAM C. WEST
vs.
JOHNSON N. CAMDEN.

To support the issues on his part the plaintiff testified as follows:

I am the plaintiff in this suit. I have known Mr. Camdem, the defendant, some 17 or 18 years, and had business connection with him off and on—limited—in the early part of the time, having bought goods from him when he was in business in West Virginia.

At or about the time when the contract was made by me with Mr. Camden and immediately before I was engaged in the refining of petroleum and dealing in oils generally, and had been engaged in that business about 25 years. My father and brother were in business previous to that. Up to my majority I was clerking for the firm, and at that time I was taken into partnership and was a member of the firm at the time of the transaction in reference to which this suit was brought.

21 Our business was a very large one and had been growing from year to year very considerably. We had a very large connection throughout the South and also a very large export refining trade—selling petroleum for export to different ports of Europe. The yearly average of our business about that time seldom ran below—I have no recollection of its ever running below—twenty

thousand dollars, and up to seventy-six thousand dollars one year. That was our fiscal year running from June, 1876, to June, 1877.

Some five or six months before this transaction with Mr. Camden we called our oil works the Crystal Oil Works, situated in Canton, Baltimore county, on the line of the P., W. & B. R. R. They were the largest works in the vicinity of this city, and were equipped first class in every respect. They had recently been very much enlarged and everything added to them to make them a first-class and perfect affair, and Mr. Camden was aware of the character and extent of our business from the knowledge or information he might — derived from the well-known reputation of the house and the large sales and transactions we made at and about the time when this contract upon which I have sued on was made.

Mr. Camden was president of the Consolidated Oil Company of Parkersburg and Baltimore, and he had large connections with the Camden Consolidated Oil Company, which was part and parcel of the Standard Oil Company, owning (as I have been informed) largely the controlling stock of the Camden Consolidated.

22 Counsel for plaintiff then asked the following question:

Now please give the jury, without my questioning you, the details of the transaction upon which you consider yourself entitled to bring this suit, and state how it commenced and under what circumstances.

It was here agreed that the subsequent testimony of the witness should be given subject to exception.

And witness answered the above interrogatory as follows:

Some time during 1876 Mr. Camden approached our firm with a view of having us connect ourselves with the interests of the Standard Oil Company. We listened to him, heard all he had to say, and he submitted written propositions which he left with us. I have not those written propositions; he took them away. By these propositions he wanted us to go into a joint arrangement, but limiting the action of the proposed company to a sphere of home trade. He left the document with us, and, upon due consideration with my partners, we declined it. I recollect we were about sending a note declining, and he came around and I handed him the note and he took up the papers and went away. In the meantime I had been to New York with Mr. Camden and had an interview with several of the officers of the Standard Oil Company separately. The first one was with Mr. John Rockfelter, the president. Mr.

Camden was with me. We talked the matter over for some
23 time. Mr. Rockfelter said that any arrangement that Mr.

Camden would make with us would be satisfactory to them, the Standard Oil Company. He was president of the Standard Oil Company. After that interview I came home and we declined the junction.

This conversation was prior to the proposition which was made by Mr. Camden to my firm and which was rejected. There was nothing done, to my knowledge, after that for a long time, until

probably a year subsequently, when Mr. Camden came to Baltimore, and we had several interviews in regard to the matter. So far as I know, he sought me; had several interviews; and also, at the time, it was given out that they were going to make a deal with other refineries; that they had already bought out one refinery, or about accomplished, of Brown, Hamill & Co., and that they were about consummating arrangements with other parties, with the Union Oil Works, with Messrs. Poultney & Moale, Christopher & Co., Robert Read, and others.

Plaintiff's counsel asked the following question and witness replied as follows:

Did he say for what purpose they had been making those arrangements?

Wanted to make a joint stock company; they were willing to pay fair prices for the refineries, and they were anxious to compass the whole thing, and that by doing so they would be able to control the trade in Baltimore; there wouldn't be that competition and
24 difficulty going on that had probably been working just about that time. The matter was submitted to my father. Mr. Camden said that he desired to buy us out. As far as selling out, quitting the business, we refused peremptorily; but my father's health at that time wasn't very good, and he was inclined to entertain a proposition relating to something which would probably release a great deal of his capital from our then firm, my brother and myself being unable to furnish capital enough to take it in our own hands. I had numerous interviews with Mr. Camden.

These interviews were generally single; one or two in the presence of my father; but the arrangement was left until made with my father and myself; my younger brother, being the junior partner when we decided to sell, acquiesced. When the first proposition was made we distinctly refused to go out of the business at all.

The sale of the property was another thing. The proposition was that there should be a joint stock company, and there would be certain offices made; that myself and brother should be provided with permanent situations at fair salaries, and that by reason of forming the company and controlling all the Southern territory—having it all among ourselves, being able to dictate prices—the profits of course would be very large indeed, that they would be able to get full prices, and that the stock undoubtedly would pay forty per cent. per annum dividends.

25 This conversation took place anterior to the formation of the United Company. Upon that basis, a statement of that kind, we thought well of it and consummated the arrangement. Upon those promises and statements made we agreed to the consummation. I desire to say that upon conference of myself and my partners we then agreed to enter into an arrangement based upon such as Mr. Camden stated and outlined. The inducement was that that stock would undoubtedly pay forty per cent. per annum.

(Mr. MARSHALL:) We object to that, because there is nothing of that in the declaration—no contract or agreement of any kind.

(The WITNESS, resuming:) That I should have a permanent position, paying me $5,000 a year salary or more, or as much as any other paid official in the company; that proposition was considered by my firm and agreed to. Based upon the promises made by Mr. Camden, there [that] was then drawn up. Just at the last moment or just at the time they were all gathered about and all arrangements were made, this written contract and proposition for the delivery was submitted.

(Paper dated 15th December, 1877, read in evidence.)

This agreement, made this fifteenth day of December, 1877, between Christopher West, William C. West, and Edward R. West, partners doing business under the firm name and style of C.
26 West & Sons, of Baltimore, Md., of the first part, and Baltimore United Oil Co., a corporation under the laws of Maryland, of the second part, witnesseth:

That for and in consideration of the sum of one hundred thirty-seven thousand five hundred — in hand paid and to be paid as follows: seventy-seven thousand eight hundred sixty —, cash in hand paid, the receipt whereof is hereby acknowledged, and the balance in two equal instalments, in thirty and sixty days from the date hereof, to the said first party from the said second party, the said first party has sold unto the said second party all those certain pieces or parcels of ground situated in Canton, Baltimore county, Maryland, now used and occupied by them for a refinery, meaning hereby all the lands now owned, used, or occupied by them in the town of Canton aforesaid, including all the appurtenances hereditaments, easements, and privileges now enjoyed by said first party, together with all the buildings, stills, boilers, pumps, tanks, tools, brands, trade-marks, and all appliances of whatsoever kind or description now owned by them in or about the business of refining petroleum, together with the good will and successorship of their present business, and they also hereby sell the good will and successorship of their business at their store in the city of Baltimore.

And the said first parties hereby agree, covenant, and bind themselves to execute and deliver or cause to be executed and delivered good and sufficient deeds of assignment for the proper con-
27 veyance of said property to said second party without unreasonable delay, retaining a lien for the unpaid purchase-money aforesaid; and said first party covenants that all said property is free from any encumbrances whatsoever, and that it will in like manner be conveyed to said second party, — hereby agreeing to pay the rents as fully and in like manner as said first party has covenanted to do.

And the said second party also agrees to buy from said first party all their present stock of crude, refined, and other oils now on hand, together with paints, acids, horses, wagons, and all other material known as cash stock now in and about said refinery and all the goods of any kind in their said store, all to be taken at the cash value

thereof and to be paid for when inventoried, which said inventory shall be promptly taken.

(Signed) CHRISTOPHER WEST.
WILLIAM C. WEST.
EDWARD R. WEST.

Test: R. M. COULBOURN.

(Certificate of incorporation of Baltimore United Oil Company, dated 13th December, 1877, read in evidence.)

28 Know all men by these presents that we, Robert Read, of the city of Baltimore, Md.; William C. West, of the city of Baltimore, Md.; Thomas Poultney, Jr., of the city of Baltimore, Md.; George N. Moale, of the city of Baltimore, Md.; James C. Christopher, of the city of Baltimore, Md.; Johnson N. Camden, of Parkersburg, W. Va., being citizens of the United States and a majority of whom are citizens of the State of Maryland, do hereby certify that we do, under and by virtue of the general laws of this State authorizing the formation of corporations hereby form a corporation under the name of "Baltimore United Oil Company of Baltimore County"

2. We do further certify that the said corporation so formed is a corporation for manufacturing and refining petroleum and its products and for the sale, transportation, or other disposition of the same, and for the manufacturing of barrels, staves, and any other articles connected with the business of refining, manufacturing, and packing of petroleum and its products and the sale, transportation, and other disposition of the same; that the term of existence of the said corporation is limited to forty years, and that the said corporation is formed upon the articles, conditions, and provisions herein expressed, and subject in all particulars to the limitations relating to corporations which are contained in the general laws of this State.

29 3. We do further certify that the operations of the said corporation are to be carried on in the city of Baltimore and in the county of Baltimore, in the State of Maryland, and that the principal office of the said corporation will be located in Canton, Baltimore county, Maryland.

4. We do further certify that the aggregate of the capital stock of the said corporation is six hundred thousand dollars, and that the said capital is divided into six thousand shares of the par value of one hundred dollars each.

5. We do further certify that the said corporation will be managed by nine directors, and that Robert Read, of the city of Baltimore; William C. West, of the city of Baltimore; James C. Christopher, of the city of Baltimore; George N. Moale, of the city of Baltimore; Johnson N. Camden, of Parkersburg, West Va.; William P. Thompson, of Parkersburg, West Va.; Edward R. West, of the city of Baltimore; William T. Poole, of the city of Baltimore; Thomas Poultney, Jr., of the city of Baltimore, are the names of the directors who will manage the concerns of the said corporation for the first year.

In witness whereof we have hereunto set our hands and seals this

thirteenth day of December, in the year eighteen hundred and seventy-seven.

30

ROBERT READ. [SEAL.]
WILLIAM C. WEST. [SEAL.]
THOS. POULTNEY, JR. [SEAL.]
GEORGE N. MOALE. [SEAL.]
JAMES C. CHRISTOPHER. [SEAL.]
JOHNSON N. CAMDEN [SEAL.]

Witness:
J. HOWARD.

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

Before the subscriber, a justice of the peace of the State of Maryland in and for the city of Baltimore, personally appeared on this thirteenth day of December, eighteen hundred and seventy-seven, Robert Read, William C. West, Thomas Poultney, Jr., George N. Moale, James C. Christopher, Johnson N. Camden, and did severally acknowledge the foregoing certificate to be their act and deed.

J. HOWARD, *J. P.*

STATE OF MARYLAND, *Baltimore City,* } *sct:*

I hereby certify that James Howard, Esquire, before whom the annexed acknowledgments were made and who has thereto subscribed his name, was at the time of so doing a justice of the peace of the State of Maryland in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof I hereto set my hand and affix the seal of the superior court of Baltimore city this 13th day of December, A. D. 1877.

GEORGE ROBINSON,
Clerk of the Superior Court of Baltimore City.

31 I, Jas. D. Watters, one of the judges of the circuit court for Baltimore county, do hereby certify that the foregoing certificate has been submitted to me for my examination, and I do further certify that the said certificate is in conformity with the provisions of the law authorizing the formation of said corporation.

JAS. D. WATTERS.

32 (Mr. MARSHALL to the court:) If your honors please, now we move to exclude evidence of any agreement that has been offered here, stated by the witness, as to the consideration of this contract made with the company. He has stated that the negotiations took place; that upon the faith of the statement made by Mr. Camden the money and the other things he was to get, the permanent office and the salary; that they agreed to execute and consummate the arrangement, and that the arrangement was consummated by this paper, and the whole consideration of this paper was $137,500,

and for that they conveyed everything that they did convey; that everything the company got, everything that passed to the company according to this contract, was for this consideration. Now, we move to exclude the evidence of any other consideration than the consideration mentioned in this contract, We further object to it because the promise, even such as it is, was a joint promise, and there is but one plaintiff in this suit. It was an agreement, as testified to, with the firm, with the father and the two sons, and the firm can sue on it, and only the firm can sue on it.

(Judge BOND:) We think the evidence ought to go in.

(Mr. MARSHALL:) We reserve an exception.

WITNESS, resuming: The proposition was made to me by Mr. Camden, first, to retire altogether from the business, among other things. That I positively refused to do. When he made the
33 proposition to me which I have stated, in consideration of which I agreed to join in the execution of this conveyance of our property, there was nothing in that understanding between Mr. Camden and myself or in my proposition as to our refraining from engaging in business thereafter, except that we transferred the then business and the property and stock according to the written agreement there. Upon the proposition so made to me by Mr. Camden I agreed to join in the execution of this conveyance, and the conveyance was made by my father, my brother, and myself to the company.

It appears by the dates that this company had been incorporated only two days before that agreement was entered into, and the negotiations or propositions made to me by Mr. Camden were in anticipation of the formation of the company, and had been going on for some time there with ourselves, as well as with other people.

(Mr. MARSHALL:) It is understood that we except to all this evidence outside of the contract.

(Mr. WALLIS:) Yes, sir.

(Mr. MARSHALL:) The court understands that we except to all this evidence.

I was one of the incorporators named in the certificate of incorporation of Dec. 13th, 1877; Mr. Camden, the defendant, was another.

(Paper dated December 14th, 1877, Baltimore United Oil Company, &c., was read in evidence.)

34 And witness said that it showed, as he believed, the proportion of stock taken by him and Mr. Camden.

We understood that Mr. Camden when subscribing as trustee was trustee for the Standard Oil Company. The company went into operation almost immediately. It commenced business on the 15th day of December. There was a meeting either on the 14th or 15th of the month, and I was elected vice-president at a salary of $5,000 a year. I continued for five years and one month, drawing a salary from the company of $5,000 a year. There were several additions made to my salary during that time. The business of the company

didn't turn out as satisfactorily as I had been led to believe it would be, owing to the promises of supposed heavy dividends to be declared, and I became dissatisfied. I spoke to Mr. Camden, who was the president of the company, in regard to it; told him I was dissatisfied and I would expect additional pay, and they paid me more money. And again, when it still continued dull, by reason of the Standard Oil Company allowing competitors to come into the territory which we were supposed to control as our own and which had been promised to us, that we were to have the whole of that business—by reason of the competitive company, belonging to the Standard Oil Company, coming in there and driving us out of a very large portion of that territory the money wasn't earned which it was represented would be earned, and the expenses were heavy by reason of a large number of employees, and of course we didn't earn the forty per cent.
35 that I was led to expect under promises and contracts, and I demanded additional compensation. Forty per cent. upon the stock was the suggestion or inducement that was offered to me by Mr. Camden, and was one of the reasons of my going into it. I was removed 15th of January, 1883.

(Mr. MARSHALL:) Let us have the proceedings he speaks of.
(Mr. WALLIS:) I do not ask him for the proceedings.

Q. You have stated you received some communications and Mr. Marshall requested you to produce them. Before you were removed, will you be good enough to say whether or not there were any letters addressed to you by Mr. Camden, or by any other person belonging to or representing the Standard Oil Company, in reference to your continuing in the company?

A. Not by Mr. Camden. There were by officers of the Standard Oil Company.

Q. Here is a letter dated October 14, 1882, signed by Mr. J. Archibald. State whether or not that has any relation to the subject. I do not wish to introduce it if it has not.

A. (After inspection.) Yes, sir; it has, not particularly bearing upon this subject—indirectly so; that called for a conference, for Poultney & Moale to visit New York with the view of having a conference with these gentlemen in regard to this matter; but it amounted to nothing at all. I think Mr. Archibald was vice-president of the Standard Oil Company and president of the Acme Oil Company, a branch of the Standard, and a member of the executive
36 committee of the Standard Oil Company.

(Letter read in evidence:)

STANDARD OIL COMPANY,
NEW YORK, *Octo.* 14*th*, 1882.

W. C. West, Esq., vice-pres't Balto. United Oil Co., Baltimore, Md.

DEAR SIR: In view of the early termination by limitation of the five years' contracts made in connection with the business of the Baltimore United Oil Co., we desire at your earliest convenience to have a conference with you in relation to that business.

Will you kindly at once confer with Mr. Thos. Poultney, Jr., sec'y, and Mr. Geo. N. Moale, treas., and ask them to come here with you for such conference.

Please advise me at your early convenience when we may hope to see you.

Very truly yours, J. D. ARCHBOLD.

I went to New York and they did not state that the conference had any connection at all with my removal from the place. They spoke in regard to limited contracts. I was aware at the time that they had five-year contracts with some parties, but that they had none such with me. These were five-year contracts made
37 with Poultney & Moale and others, by which they transferred them their business, and paid them each $15,000 a year on account of their business. They couldn't arrange, and sent us home without having accomplished anything. The next letter is dated November 24th, 1882, and was received from John Archbold, the gentleman who wrote the other one, and Benjamin Brewster, a very prominent officer in connection with the Standard Oil Company, and also one of the executive committee, I think chairman of it.

(Letter read in evidence:)

Dictated. STANDARD OIL COMPANY,
NEW YORK, *Nov.* 24, 1882.

W. C. West, Esq., vice-pres't B. U. O. Co., Baltimore, Md.

DEAR SIR: The Standard Oil Co. has had under careful consideration the affairs of the Baltimore United Oil Co. It is the necessary policy and purpose of the S. O. Co. to reduce to the lowest point the current expenses of all its interests, and it has decided that all the salaries and expenses incident to the business of the B. U. O. Co. shall be borne entirely by that company and appear on its books. In view also of the antagonisms which seem to exist in the manufacturing and distributing interests of Baltimore, the Standard Oil Co. has arrived at the conclusion that it will be to the advantage of the business to make a change in the executive management of the B. U. O. Co. In reaching this conclusion the S. O. Co.
38 desires to express the kindest consideration for yourself and their appreciation of the integrity and fidelity with which you have managed the affairs of the company.

We shall be pleased to hear from you at your earliest convenience, to the end that such steps may be taken as will be necessary in the suggested change.

Believe us very truly yours,

STANDARD OIL COMPANY,
By JOHN D. ARCHBOLD.
BENJ. BREWSTER.

The executive management here referred to in this letter meant me as vice-president and general manager of the company, and the

change in the executive management meant removing me. I got that letter at one time when Mr. Camden was in the city. He was stopping at the Carrollton Hotel. I went up there to see him, met him there, and had a conversation with him in the rotunda, and he expressed regret and surprise—rather surprise—and was sorry that it was going to take place—something of the kind. He gave me no satisfaction whatever; said that I had better go to New York and see the parties, and advised me to go, and I did so. I went over there in November and saw them, and they said they had decided to reduce expenses. I told Mr. Camden before I went, as well as told them there, that by the promises he had made I had been
39 guaranteed the position and would not resign the position, as they desired me to, and turn it over, but wait until I was actually voted out of the position.

When I spoke to Mr. Camden about the arrangements he had made with me in regard to my remaining and having a permanent occupation he stated he was very sorry that they had taken the matter in their hands, and that I would have to see them about it. On the 30th of December, 1882, a letter from Mr. Archbold, addressed to me, dated from New York, was received by me from him.

(Letter read in evidence:)

NEW YORK, *Dec.* 30, 1882.

W. C. West, Esq., vice-pres't B. U. O. Co., Baltimore, Md.

DEAR SIR: Referring to our conversations with you in relation to the affairs of the Baltimore United Oil Co., we beg to say to you that it is our decision that Mr. W. T. Poole shall succeed to the administration of the affairs of that company. He will at once confer with you — relation to the matter, and if you will kindly at once put him in the way of such full successorship you will greatly oblige,

Yours truly,

BENJ. BREWSTER &
J. D. ARCHBOLD.
C.

40 I think I got that on New Year's Day, if I recollect aright. It was sent to my dwelling, being a holiday, or I had gone to the post office, or it had been sent to me as a personal letter. The next day Mr. Poole came to my office, the Baltimore United Oil Company's office, on Gay street, and asked me if I had received such a letter. I told him yes. — asked me what I was going to do about it, and I told him nothing at all. He said, Why? I said, I have been elected to this office permanently, and I propose to keep it until I am turned out of it. He went away, and that was the last of it until the annual election, on the 15th of January. Subsequently, on the 15th of that month, when the meeting of stockholders was had, of course they had a majority of the stock——

(Mr. MARSHALL, interposing:) Let us have the proceedings.

Q. At a meeting of the stockholders—the books will show, I suppose——

A. Mr. Camden was present; he was president of the company.

Plaintiff's counsel then asked the following questions, and witness replied:

Q. Are you able to state, in regard to putting you out, how he voted?

A. The meeting was held at one of the offices of the company at Canton, connected with one of the works, and before the meeting took place I called Mr. Camden aside and told him I understood I was to be removed from the position of vice-president
41 and general manager of the company. He said he was very sorry, but they had determined to do it, and he hoped it wouldn't interfere with those pleasant relations which had always existed between us. I told him I did not see how it could be otherwise; that he had made me promises, a number them, and every one had been broken. Says he, What do you mean? I repeated several of them to him. He says, I did not. I says, It's not for us to be here, like boys, saying "You did" and "You didn't;" I say you did. Well (he says), I am very sorry and couldn't help it. In fact (he says), there were too many promises made anyhow. That was his last remark to me.

Q. Are you able to state whether, upon the vote by which you were put out from office, Mr. Camden voted?

A. I don't know exactly. The stock of the Standard Oil Co. at that time had been changed from Mr. Camden's name into the name of other trustees. All the stock was voted for the new board of directors.

Q. The entire stock?

A. Except that which I and my brother held. The officers were elected by the new board. They were: Wm. T. Poole, elected president; H. M. Tilford, vice-president; George M. Moale was made secretary and treasurer. Mr. Poultney was transferred from the Baltimore United Oil Company to an official position in the Camden Consolidated Oil Company. During the last year of my service I received a salary of $15,000; $5,000 from the company, in monthly payments, and checks for $5,000 each, in July and
42 January, which came from Mr. George H. Vilas, of the Standard Oil Co.

The last official position he held in the company I heard was chief auditor of the Standard Oil Co.

By COUNSEL FOR PLAINTIFF: Here is a letter in reference to the salary having been paid by the Standard Oil Co. through Mr. Vilas. I want to show your connection with it by giving this letter in evidence. State in whose handwritting that is, and the memorandum below.

A. The lower part is Mr. Camden's, throughout, and the upper part is Mr. Vilas'.

(Letter dated New York, January 9th, 1882, read in evidence:)

NEW YORK, *Jan'y 9th*, 1882.

Hon. J. N. Camden, Washington.

MY DEAR SIR: I am in receipt of your favor of 4th inst., and have wired you that your suggestion was satisfactory, and that I would attend to the matter. I preferred to obtain the money from Cleveland, and therefore it will require two or three days' time to bring it around.

Yours truly, GEO. H. VILAS.

DEAR WEST: The above refers to your matters and you will receive c'k in few days. I also had telegram to same effect. We will arrange to talk matters over with Tough soon.

Y'rs, J. N. C.

43 Tough is the firm of Tough, Rutherford & Co., jobbing oil business.

By plaintiff's counsel:

Q. Here is a letter dated 15th July, 1882, from Vilas, addressed to you. State whether or not there came in that the draft of $5,000 that he speaks of.

A. (After inspection.) And one also for $2,500.

Q. Who was that for?

A. My brother.

(Letter read in evidence; also letter dated 16th January:)

44 BROADWAY, NEW YORK, *July 15th*, 1882.

Mr. W. C. West, Baltimore.

MY DEAR SIR: I inclosed herein draft on Balto. to your order for $5,000, and another draft to order of E. R. West for $2,500, being payments due to both, as per agreement, to July 1st inst.

I beg that you will pardon the delay which has occurred in this remittance, but various circumstances caused it, and which I could not seemingly avoid.

Yours truly, GEO. H. VILAS.

44 NEW YORK, *Jan'y 16th*, 1882.

Mr. W. C. West, Baltimore.

MY DEAR SIR: I inclose herein drafts of Second Nat. Bank Cleveland on Manhattan Bank, New York, Nos. 57343 and 57344, ea. $5,000, one draft payable to the order of yourself and one payable to the order of E. R. West, which completes the pay'ts for 1881, in accordance with private agreement with Mr. Camden. Please send to me the receipts of yourself and Mr. E. R. West for this remittance, and believe me

Yours truly, GEO. H. VILAS.

(Mr. MARSHALL, producing a book:) Here are the minutes of the proceedings at which Mr. West was dropped.

(Same, dated Baltimore, January 15, 1883, read in evidence:)

45 Office of Baltimore United Oil Co., Balto. Co., Md.

BALTIMORE, *Jan. 15th*, 1883.

At the annual meeting of the stockholders of this company held this date for the purpose of electing directors to serve for the ensuing year and for the altering or amending of the by-laws and transaction of other business, there were present Mess. J. N. Camden, W. T. Poole, Geo. H. Vilas, W. C. West, Wm. P. Thompson, J. D. Archbold, Robert Read, S. E. Poultney, E. R. West, L. D. Passano, Geo. N. Moale, T. Poultney, Jr., S. C. T. Dodd, and James C. Christopher.

On motion, T. Poultney, Jr. was made chairman, and Geo. N. Moale, secretary.

On motion, the reading of the proceedings of the last meeting was dispensed with. Mr. Vilas then offered the following resolution which was passed:

Resolved, That the number of directors of this corporation be fixed at nine, and that section 3 of the by-laws be, and is hereby, amended accordingly.

On motion, the chairman appointed L. D. Passano and S. E. Poultney judges of election, and the meeting proceeded to cast ballot for nine directors, which resulted in votes of 5,399 shares out of 5,857 shares of the capital stock of the company voted, being cast for W. T. Poole, J. D. Archbold, T. Poultney, Jr., Geo. N. Moale, W. P. Thompson, Rob't Read, Geo. H. Vilas, Jas. C. Christopher, and J. N. Camden. The judges having reported to this effect to
46 the chairman he declared these gentlemen elected to serve for the ensuing year.

Mr. W. C. West, not having been re-elected to the directory, protested against same on the grounds that he was next to the largest stockholder and should be represented in the board.

On motion, the meeting adjourned.

GEO. N. MOALE, *Sec'y.*

BALTIMORE, *Jan'y 15th*, 1883.

Meeting of directors at office, No. 9 S. Gay St.

Present: J. N. Camden, W. T. Poole, Col. W. P. Thompson, G. N. Moale, Thos. Poultney, Jr., J. D. Archbold, J. C. Christopher, G. H. Vilas, Rob't Read.

On motion, Mr. Archbold was called to the chair and Thos. Poultney, Jr., made secretary *pro tem.*

On motion, the reading of the proceedings of the last meeting was waived.

On motion of Mr. Camden, seconded by Mr. Vilas, W. T. Poole was made president of the company, to serve for the ensuing year.

On motion of Mr. Camden, seconded by Mr. Moale, Mr.
47 G. H. Vilas was elected vice-president.

On motion of Mr. Camden, seconded by Col. Thompson, G. N. Moale was elected secretary and treasurer.

On motion of Col. Thompson, seconded by Mr. Vilas, W. T. Poole, Rob't Read, and J. C. Christopher were appointed as an executive committee to serve for the ensuing year.

THOS. POULTNEY, JR.,
Sec'y pro tem.

48 Witness produced and read a press copy of a letter which he wrote to Mr. Vilas on the 5th, making a request, which he complied with in the letter of July 15th.

(Letter dated July 5th, 1882, from witness to Vilas, read in evidence:)

JULY 5TH, 1882.

George H. Vilas, Esq., Standard Oil Company, New York.

DEAR SIR: Will you please send me check for five thousand dollars ($5,000) for my extra salary to 1st inst.

I am yours truly, W. C. WEST.

Witness produced and read a letter dated July 12th, 1882, from Camden to him:

UNITED STATES SENATE,
WASHINGTON, D. C., *July* 12, 1882.

W. C. West, Esq., No 9 S. Gay street, Balto., Md.

MY DEAR SIR: Your favor of the 11th instant received. I will attend to the matter you referred to. I had a letter from Mr. Vilas on the subject, which I answered. I suppose it would be as
49 well for you to have your meeting on the 15th, or such other time as you may fix, and if you will advise me I will try and attend.

We will have to take up the Hunt and Brady matter soon, and I would be glad if you would have me furnished with copies of all the contracts you have that will expire this year, and also furnish me with the information I spoke to you about when I saw you last.

Am glad to hear you have renewed the contract with Nicolai and got rid of that trouble.

Yours truly, J. N. CAMDEN.

Witness says that when Camden says in that letter "I would be glad if you would have me furnished with copies of contracts that you have that will expire this year" I took it to be that they were such written contracts as they had with officers of the company or other parties who had been given employment in the formation of the company. I mean such written contracts as he supposed we had in our possession that were made with other officers or employees of company—contracts which were made or supposed to have been made about the time of the formation of the company. I took it for granted that Mr. Camden supposed the contracts were in my possession which I have said were made with Poultney and others, but they were not. A letter dated September 4th, 1882, witness said, "is written and signed by Mr. Camden."

(Letter read in evidence:)

50 BALTIMORE, *Sept. 4th*, 1882.

W. C. West, Esq.

MY DEAR SIR: I went over to Washington Friday night to look after some matters in the Dep'ts. Saturday — went up with Poole in the evening and came here at 11 last night, and take the train this morning to Philada., and will return to New York again this evening.

I received your letter in New York and gave it to Archbold and Brewster. Mrs. Hunt telegraphed on Friday that she would be in New York to-day, so I suppose they will have their session to-day, but the labors of the tariff commission will be light in comparison, and no doubt end sooner. I will be in New York most of this week; sorry I could not get to see you.

Yours truly, J. N. CAMDEN.

A letter dated December 5th, 1881, being handed the witness, he said: "That is written and signed by Mr. Camden."

(Same read in evidence:)

U. S. SENATE CHAMBER,
WASHINGTON, *Dec. 5th*, 1881.

DEAR WEST: Enclosed I hand Archbold's letter in reply
51 to the one we wrote on Friday. Please read and return to me. I think you had better regard the information contained as between ourselves, as I do not know how far it should be spoken of at this time (I mean Buffalo pipe line matter). I think it is intended to be confidential for the present. This letter confirms our judgment and action in putting prices down to hard pan, and I believe we will make money and settle things most speedily by adopting the hardest kind of hard pan, as Johnnie describes it. We will make money, for the reason that it causes so little sacrifice to do it when it takes less than one cent on the margin; when we get two, three, four, or five we soon get it back, or to lose more it makes a big item then.

Yours, J. N. C.

"Johnny" referred to in that letter is John D. Archbold.

Letter dated February 1st, 1881, being put in the hands of the witness, he said: "It is written and signed by Mr. Camden."

(Parts of same read in evidence:)

PARKERSBURG, *February 1st*, 1881.

MY DEAR WEST: I feel greatly disappointed in not being able to leave this evening for New York to join you, as I expected to do,
but I am not feeling quite so well to-day as I did yesterday,
52 and the Dr. insists that I ought not to leave to-day. I had two weeks of loss of sleep and general cussedness in Wheeling, winding up with a gathering on my stern, which got me out of

fix generally, from which I have not recuperated. I shall leave just as soon as I can safely do so; I hope to-morrow evening, but certainly at as early a day as possible, to meet you in Baltimore.

It is a great disappointment not to be with you in N. Y., but hope you will be able to get everything in satisfactory shape.

Allow me to suggest that you make no compromise by which Curley is allowed to come into your territory; that ought not to be under any circumstances. It would be a good thing if an arrangement could be made with T., R. & Co. to avoid competition in the South, and I would favor it as far as I could, provided a fixed and definite understanding is arrived at with Curley, by which he is to take to B. U. O. Co. a specified amount of oil; and generally I would do what I could to accommodate the general interests, except to yield the principles of right that belong to B. U. O. Co. That Co. has the right to the trade of Baltimore, Washington, Richmond, and points north of the line agreed upon with Curley, and we must not yield it.

I will certainly see you soon in regard to business points in Baltimore. I hope to be in N. Y. Friday; will telegraph you again to-morrow, but in meantime go ahead, you are equal to the emergency.

Yours truly, J. N. C.

53 By plaintiff's counsel:

Q. You stated, in general terms, yesterday, as I remember, as one of the grounds for the prospective or supposed prospective prosperity of this company and its profits, that is was to have entire control of the oil business in this district and this market?

A. I did, sir.

Q. And that it was subsequently interfered with by reason of competitions which had been allowed or fostered by the Standard Oil Co.?

A. Yes, sir.

Q. State if this letter, which I have read, about Mr. Curley has any relation at all to that question.

A. The firm at that time was Chess, Curley & Co., which was a branch of the Standard Oil Co. When the Baltimore United Oil Co. was formed it was promised and guaranteed by Mr. Camden, and also by other gentlemen representing the Standard Oil Company, that Baltimore should have the entire southern territory in which to work their business, and that the prospects would be very flattering for large profits—an enormous business, and consequently great gains.

Q. You have stated that that was interfered with by competition. Had this letter, I ask you, in regard to Curley, any relation to that question?

A. The house of Chess, Curley & Co. was located at Louisville, Ky. It was a branch of the Standard Oil Co. and acting for the Standard Oil Co. They entered immediately into competi-
54 tion with the Baltimore United Oil Company throughout the entire southern territory; came up as far as to open a house

in Richmond, and actually opened one in Baltimore; had a representative in Norfolk and started a house in Wilmington, Charlotte, and a number of other places—entering in direct competition, a direct quarrel and fight, with the Baltimore United Oil Co.

Q. How long did that last?

A. It exists to-day, sir.

Q. State whether or not you had any conversation with Mr. Camden upon the subject and made any complaints of it, or what was your intercourse with him, if any, in regard to the matter.

A. I protested against it from the very first, but without any recourse and without any consideration, except so far as there was an agreement made that they should not come above a certain line, drawn from Wilmington to Atlanta, Ga. That I did under protest also, because I had stated to him and the other officers of the Standard Oil Co. at the time the contract was made that that territory all belonged to the Baltimore United Oil Co., and Chess, Curley & Co. had no business there whatever.

Letter dated January 10th, 1881, from Camden to witness being handed to the witness, he said it was in Camden's handwriting.

(Same read in evidence:)

55 PARKERSBURG, *January* 10, 1881.

W. C. West, Esq.

MY DEAR SIR: Our Legislature meets on Tuesday of this week, and I will have to be there for a week or ten days to look after the senatorial contest. I was anxious to have had the Curley matter disposed of before that came on; Mr. R. being in Cleveland prevented it. I have a letter from him saying he will be glad to meet us and take that matter up as soon as we can meet him after he goes to N. Y.; he will go there the last of this week. I hope you will let the matter rest quietly till I can leave Wheeling; this will be a personal favor to me, as I am letting politics interfere with business for the present. I do not think I will have to remain there over ten days.

I think I have a sure thing in my election, but the combined opposition are giving me hell all along the line, and there is always danger of stampeding some weak-kneed friends who are timid. I agree with a comical fellow out here, who, after being defeated for a nomination, said that politics was a son of a bitch. It is worse than the oil business.

Write me to the McLure House, Wheeling.

Yours truly, J. N. CAMDEN.

56 R. in that letter means Rockafeller, president of the Standard Oil Company.

Letter-press copy of letter dated June 17th, 1880, being placed in the hands of witness, he said: "It is a press copy of letter I wrote to Mr. Camden."

(Same read in evidence:)

JUNE 17TH, 1880.

Mr. J. N. Camden, Parkersburg, W. Va.

DEAR SIR: In regard to the conversation we had on Tuesday, about salaries, I have talked with Brother Ned. He does not feel satisfied with the proposal you made for him, and expresses about the same opinion I did in regard to myself. The suggestive proposal I made I believe would meet his views for this year, and I am sorry that you did not feel like meeting it. If you are still of the same opinion as then, I beg that you will bring the matter to the attention of those to whom you wish to refer it as early as possible.

Hoping to hear from you soon, I am, yours truly,

W. C. WEST.

In the conversation referred to in this letter I told Mr. Camden that I was dissatisfied, as well as my brother was dissatisfied,
57 with the compensation we had been receiving as a result of our connection with the company; that the dividends that had been promised us had not been earned and not been declared, and that I desired an increased compensation, as he did also. I don't recollect exactly what the proposal made as to my brother was. I wanted an increase of salary of $3,000. Mr. Camden, upon that suggestion or that proposal upon my part, said that he thought it should continue as it had been the previous year; that he was not willing to accede to its being made any larger until he had consulted with Rockafeller and some other officers of the Standard Oil Company. The previous year it had been $12,000. In the passage "I beg that you will bring the matter to the attention of those to whom you wish to refer it as early as possible" the persons referred to by him, as he told me, were Rockafeller and some others—executive committee, I believe, of the Standard Oil Company. Afterwards an addition was made to my salary; they paid me $15,000. There was $5,000 of this salary paid in regular monthly instalments by the Baltimore United Oil Co.; the other was in the form of checks paid semi-annually. It is to that part outside of the $5,000 which was paid by the company that the correspondence which has been introduced from Mr. Vilas referred.

A letter dated June 19th, 1880, from Camden to witness was identified by witness as being written and signed by Mr. Camden. The words "unless you should sooner conclude to let it remain on my basis" refer to the salary that had been already existing for the previous year, of $12,000.

58 PARKERSBURG, W. VA., *June* 19, 1880.

W. C. West, Esq.

MY DEAR SIR: Yours of the 17th inst. received. I regret you did not accept the arrangement proposed. I was in hopes we could have left it over on that basis till January, as I preferred not bringing it up in N. Y. at present, but will do so, leaving here as early after the 4th July as I can, unless you should sooner conclude to let it remain on my basis.

I go to Cong. to-morrow.

Yours truly, J. N. CAMDEN.

On cross-examination witness said that when Mr. Camden first came to see his firm, in the year 1876, he understood that he came to them on behalf of the Standard Oil Company, to have them connect themselves with that company. At the instance of Mr. Camden he went with him to New York during that year. I went over there to see those gentlemen with the view of making such consultation as he suggested—such action, rather—with reference to merging our business or connecting it with that of the Standard Oil Company. They suggested that there should be a joint stock company formed; they should take one-half of the stock and we should take the other half and run the business. The company
59 should be formed here in Baltimore.

By defendant's counsel:

Q. That was pretty much what was done afterwards, was it not, except that other people came into it?

A. No, sir; quite different.

Q. Did you not form a company here?

A. Yes, sir.

Q. And did you not go into it?

A. Yes, sir.

Q. And did not they take stock to a large amount?

A. In the first case, it was nobody but the Standard Oil Co. and ourselves. The other was quite different.

Q. That was to embrace only your own business, but subsequently the other oil dealers were brought in and became members of the same association?

A. It was done in a different form, sir. They approached these parties separately and bought up several of them—bought several of them out and out. About a year afterwards the negotiations were reopened. Mr. Camden's first proposition was to buy out the business. I was opposed to it and refused to sell. He wanted to buy it out for a joint stock company. We were to put our business and our property that we were using in our business into this joint stock company. This I declined. When he opened the negotiations which resulted in the arrangement that was made there were a number of interviews. At first I positively refused to sell. I thought the business could be best kept in our own hands,
60 and we were capable of running it ourselves independently, but my father's health at that time being bad, as I stated, an interview with him led him to take the matter into consideration, and that led to further interviews between Mr. Camden and myself. The result was to effect a connection, or to acquire our business and property that we used in our business for this new company which it was proposed to form and which was controlled by the Standard Oil Company. We considered that in these negotiations Mr. Camden was acting for the Standard Oil Company. I understood that he was a director in the Standard Oil Company, and for that reason I drew the inference. I believe that he represented the Standard Oil Company in the transaction. Mr. Camden said that I should be employed; that he would guarantee me permanent employment

at a salary of not less than $5,000 a year; that he would guarantee it to me. I didn't ask him from whom.

By defendant's counsel:

Q. Somebody was to employ you. If he guaranteed that you were to get employment he guaranteed that somebody should employ you?

A. It was to be through the connection with this new company, of course.

Q. Who did he say would employ you?

A. He would.

Q. Do you mean to say that you understood Mr. Camden was himself going to employ you?

A. Mr. Camden would see that I had permanent employment.

61 Q. By whom?

A. I didn't go beyond his assurance. I considered him responsible to make such statement.

Q. Permanent employment?

A. Yes, sir.

Q. For what—to do what?

A. In connection with the management of that company and the business.

Q. Who was to be your employer?

A. Mr. Camden. He gave me the assurance and I looked to him for it. Mr. Camden was to employ me in connection with the new company.

Q. The contract that you have brought this suit for is a contract by which Mr. Camden promised that you should serve as an officer, to wit, vice-president, of the Baltimore United Oil Company of Baltimore County, a corporation incorporated under the laws of the State of Maryland, &c., &c. * * * Do you mean to say that it was any different from what it is set out here; that he agreed that you should be employed as an officer of the United Oil Company?

A. No, sir; I do not.

Q. That is what you say he agreed, that you should be employed as an officer of the United Oil Company.

A. That I should have permanent employment as an officer of the company.

Q. He undertook that you should be permanently employed as an officer of that company?

62 A. Yes, sir.

Q. Did he fix the salary that you were to have, and say what salary you should certainly have from that company?

A. I was to have a salary of not less than $5,000 a year, or as much as any other officer of the company received.

Q. You were to have a salary of at least $5,000 a year from the company, or as much as any other officer received?

A. Yes, sir.

Q. That was your contract, was it—that was what he agreed you should have?

A. He also assured me, as an inducement to come to this agreement, to make this contract with him, that the stock which I held in the company should net me 40 per cent. dividends. That was the inducement which I——

Q. (Interposing.) Did he promise you that—did he promise it should, and guarantee it should?

A. He led me to believe it would.

Q. Did he guarantee that the stock would pay 40 per cent. dividends?

A. To use his words, he said: It would undoubtedly do it; will no doubt do that and a great deal more.

Q. Did he guarantee that—a dividend of 40 per cent.?

A. No, sir; he didn't guarantee it.

Q. He had, I suppose, every confidence it would, and told you so?

A. Yes, sir; and told me it would pay 40 per cent. and a great deal more. I knew when Mr. Camden subscribed to the stock of the new company as trustee that he represented the Standard Oil Company. I was one of the original incorporators of the company, and was one of the first board of nine directors that managed the affairs of the company the first year, and also one of the executive committee the first year.

63

(Minutes of the meeting of 18th, December, 1877, and other entries read from book:)

64

Baltimore United Oil Co.

Meeting of Directors, December 18, 1877.

Present: Messrs. J. N. Camden (pres't), W. C. West, Jas. C. Christopher, Geo. N. Moale, Wm. P. Thompson, Wm. T. Poole, Thos. Poultney, Jr., and Robert Read.

The following subscriptions to the capital stock of the company were reported and the subscription list filed:

Robert Read, of Baltimore, two hundred shares.

William C. West, of Baltimore, four hundred and fifty-eight shares.

James C. Christopher, of Baltimore, eighty-three shares.

Poultney and Moale, of Baltimore, two hundred shares.

J. N. Camden, trustee, Parkersburg, W. Va., five thousand and fifty-nine shares, making a total subscription of six thousand shares, and being for the entire capital stock of the company.

On motion, an assessment of seventy (70%) per cent. was made upon the amount of stock subscriptions, payable in cash forthwith; whereupon the said assessment was reported paid to the treasurer of the company as follows, to wit:

Paid by	Robert Read	$14,000 00
"	W. C. West	32,060 00
"	J. C. Christopher	5,810 00
"	Poultney & Moale	14,000 00
"	J. N. Camden, trustee	354,130 00
	Total	$420,000 00

65 It was further ordered that an assessment of ten (10%) per cent. be made payable in thirty days after this date; ten (10%) per cent. payable in sixty days after this date, and ten (10%) per cent. payable in ninety days after this date, which, when paid in, will complete the full payment for the stock of the company.

A contract with the Camden Consolidated Oil Company for the purchase of various refineries and refinery interests in the city and county of Baltimore, made in the interest of this company, amounting to the sum of one hundred forty-eight thousand one hundred fifty ($148,150.00) dollars, was presented and approved and the treasurer directed to pay the amount of purchase-money named, and said contract of sale ordered to be filed.

Contracts for the purchase of the refineries, refining interests, and successorship to the business of the following-named parties, to wit:

Of C. West and Sons,	amount	$137,500 00
" Robert Read,	"	60,000 00
" Poultney & Moale,	"	65,000 00
" Christopher & Co.,	"	25,000 00

were presented, approved, and ordered to be filed.

On motion, the president was authorized to appoint an executive committee consisting of three members, including the president, viz., J. N. Camden, Robert Read, and Wm. C. West, whose duties shall be to act, in the absence of the board of directors, in determin-
66 ing all questions in regard to the general supervision and management of the business of this company.

On motion, the resignation of Edw. R. West as a member of the committee on by-laws was accepted, and Geo. N. Moale was appointed to the vacancy thus created.

On motion, the president appointed Thos. Poultney, Jr., Geo. N. Moale, and W. T. Poole to secure temporary or permanent offices, or both, for this company's use.

There was submitted the following list of salaries for the general officers and superintendents now in the service of the company, and upon motion the salaries named below were adopted: For the president, vice-president, treasurer, and secretary, each five thousand ($5,000.00) dollars per annum; Robert Read, superintendent, three thousand ($3,000.00) dollars per annum; Robert F. Read, assistant superintendent, fifteen hundred ($1,500.00) dollars per annum; Edw'd R. West, superintendent, three thousand ($3,000.00) dollars per annum; Eugene Poultney, superintendent, twenty-five — ($2,500.00) dollars per annum; James C. Christopher, twenty-five hundred ($2,500.00) dollars per annum.

THOS. POULTNEY, JR., *Sec'y.*

67 The office that I took was one from year to year, as vice-president, at a salary of $5,000. I took the position, of course, relying upon the agreement and promise made me. My salary was advanced to $6,000 the first year, upon my demand. I told Mr. Camden I was very much dissatisfied with the way the thing had gone. I had earned no dividends, by reason of this competition

which had been allowed to come in, when the promise was to keep them out; we hadn't made the money, and therefore I had not received the revenue which I expected from it, and I wanted more money and more pay. I had been led to believe I was going to have a very large income from my stock, and as I did not get it I went to him and told him what the trouble was, and wanted more money.

The first year the company earned nothing. If it did, it didn't divide it, whatever it was. It didn't declare any dividend.

By defendant's counsel:

Q. You have testified here, and you have brought suit to recover upon contract by which Mr. Camden undertook to retain you as a permanent officer in the company at a salary as great as that of any other officer. Now, it seems that in the very first year, although you had bound yourself by such contract as that, you demanded an increase of your pay?

A. Yes, sir.

Q. That is, you were not satisfied with your contract?

A. I became aware that there was an existing contract by which two officers of the company received a higher salary than I
68 did.

Q. Received a higher salary from the Baltimore United Oil Company?

A. No, sir; they received a higher compensation for their services.

Q. From whom?

A. The same as I received mine.

Q. From whom?

A. They received theirs as I did mine, I suppose, from the Standard Oil Company. The next advance was made in my salary two years later; I think it was $12,000.

Q. You were not dissatisfied with the failure of your getting anything from your stock the first year, but were dissatisfied because other people were getting more?

A. No, sir.

Q. Now, let us understand it. What was the cause of your first advance?

A. The reason why it was made $6,000 was because I had been led to believe there were other officers of the company receiving more—better pay.

Q. That was the reason you wanted an advance?

A. Yes, sir; I was then led to suppose by Mr. Camden—when it was increased to $6,000—that that was the salary which the other parties received. The first year went along without their doing much business, and it was in the second year that I demanded an increase on account of the loss of revenue. The second year
69 I had it advanced to $7,500. That advance was made because I demanded additional pay for the reason of not receiving the proportion from my stock. The next increase, from $7,500 to $12,000, took place the following year. That increase to $12,000 was for an aggregated loss of revenue from my stock; that was

because the revenue had not been up to what it ought to have been and what I expected and was promised. The following year my salary was raised to $15,000. After that I asked no further increase for myself, but did ask an increase for my brother. The minutes show that his salary was to be $3,000. He commenced from the first to get $5,000 from them; not all from the United Oil Company. He got $2,000, in the same manner that Poultney & Moale got theirs, from the Standard.

The contract with Poultney & Moale was made by the Standard Oil Company. I had no contract with the Standard Oil Company. I had nothing except the agreement that I had with Mr. Camden, which I looked to Mr. Camden for. I knew Mr. Camden to be a very responsible man and I didn't go beyond that. I had known Mr. Camden for so many years, and considered him a very responsible man and capable of fulfilling promises made, and I took his promises as binding on his part.

By defendant's counsel:

Q. His promise was that somebody else should do something for you, was it not?

A. No, sir.

Q. His promise was that the company should employ you?

70 A. He was to be president of the company, and I supposed he would remain there and continue me and keep me in the position as vice-president and general manager. If he was to be president and hold five-sixths of the stock and continue to hold it, it was a surety that I should remain in the position.

Q. The mode in which this was to be done and the assurance to do it was that he was to effect this *was* by giving you permanent employment, retaining you in the service of the company, paying you a large salary (as high as anybody else), through the use of the stock which he held in the company? That was the understanding, was it?

A. He was to manage the company, was to be at the head of the company, and I was to be general manager of it.

Q. He was to secure that to you by the use of the power which his stock gave him?

A. I did not go into details about it; I took Mr. Camden's assurance.

Q. You stated a little while ago that the assurance you had of it was because Mr. Camden held five-sixths of the stock, and would be made permanent president of the company, and would keep you in office. At the time of the election of directors—on the 15th of January, 1882, I think it was, or 1883—Mr. Camden no longer held the stock of the Consolidated Oil Company?

A. I believe it had been transferred to some other trustees—transferred into some other names.

Q. How did you receive this additional compensation that you got?

71 A. The first thousand dollars I received was a check from the Camden Consolidated Oil company, signed by Mr. Poole, as

treasurer, of which company Mr. Camden was president. The next one after that, I think, was in a similar way; and then Mr. Poole, through Mr. Camden's instructions, drew me a draft at thirty days for $7,000 (I think) upon the Standard Oil Company at Cleveland. The ones subsequent to that were received in checks through Mr. Vilas, from the Standard Oil Co.

Q. Did you agree, or ever agree, with Mr. Camden, personally, on his own account, to pay you out of his own funds, and not as the agent or representative of anybody else, $12,000 a year?

A. He didn't say out of his own funds or anything of the kind; he stipulated to pay me that much money.

Q. Was he not dealing with you at that time as the agent of the Standard Oil Company, and did you not know it at the time?

A. I knew him to have connection with the Standard Oil Company.

Q. Did you not at that time, when he made you this promise, know that he was acting as the agent of the Standard Oil Co., from whom subsequently you received the money in the whole matter; did you not know it?

A. He paid me the money himself afterwards.

Q. Did you not know that in the whole transaction you had with Mr. Camden, which resulted in the purchase of this property of your firm's and in the agreement which you say was made with you, did you not know that he was in that whole matter act-
72 ing as the agent of the Standard Oil Company, and that it was not his individual transaction at all? Did you not know it, now? Look at the jury and tell them.

A. I didn't know to what extent Mr. Camden was interested in the matter, but I did know this, that I made the arrangement with him personally and paid no attention to who his backers were.

Q. Now, won't you answer the question? I will put it to you again.

(Judge BOND, interposing:) Answer yes or no. The question calls for a direct answer.

(The WITNESS:) I had reason to believe so, your honor.

(By Mr. MARSHALL:)

Q. Did you not believe it? Did you doubt or disbelieve it?

(The WITNESS:) At the time the deal was made with me?

(Mr. MARSHALL:) Yes, sir.

A. Well, I believed him to be acting for it.

On re-examination witness answered:

I did not at any time during the whole of this transaction, from the commencement of it to the end, have any contract with the Standard Oil Company. In my transactions with Mr. Camden I had no reference to the responsibility of the Standard Oil Company behind him. I gave credit to Mr. Camden and relied on his engagement in entering into the contract I have spoken of. I had known him between 18 and 20 years.

73 CHRISTOPHER WEST, called for plaintiff, testifies that he is the father of the plaintiff and head of the house of C. West & Sons. Mr. Camden came to visit witness once at his house, and the matter was talked over there, occupying but a short time. The statement that Mr. Camden made was that if the arrangement would be made between my son and himself respecting the disposition of the business my sons would have permanent positions, and that they would never regret it as long as they lived—those were his words—and that the stock they would take in it would pay forty per cent. I remarked to Mr. Camden, Do you think so, sir? He said, Yes; there is no doubt of it; for they will have the control of the whole Southern territory. That was about the substance of our conversation.

I was not, personally, present at any contract between Mr. Camden and my son; never attended any of the meetings or consultations that my sons had with Mr. Camden, only on this one occasion, and he there stated that if the transaction was consummated my sons would receive permanent employment and would never regret it. The very words he used were "They would never regret it as long as they lived." I was not with my son at the time when the price to be paid was being discussed. The promise made by Mr. Camden, as I have just stated, that my sons should have permanent positions in the proposed company, was one of the inducements or considerations for conveying the property of my firm to the company. I did not want that the business should be given up

74 except they had permanent positions—something to depend on.

In answer to the question, Was the promise that they should have permanent positions a part of the consideration for your making the assignment of your property to the company? witness replied: I had nothing to do with the arrangement of the price that was to be paid to the firm for the property at all.

By defendant's counsel:

Q. The assignment has been produced here, by which, on the 15th of December, 1877, your firm of C. West & Sons, in consideration of the sum of $137,500 paid in a certain way, assign to the Baltimore United Oil Company all those certain pieces or parcels of ground situated in Canton, Baltimore county, Md., now occupied by you as a refinery, together with all the buildings, boilers, &c., together with the good will and successorship, &c. Was the promise that your sons should have permanent situations part of the consideration of this agreement to sell your property?

A. Mr. Camden promised that to me, that they were to have these positions.

Q. Was that any part of the consideration which induced you to sign this paper? In other words, would you have sold out to them in that way for $137,500 without this other additional promise?

A. No; I should not.

75 WILLIAM C. WEST, plaintiff, recalled and further examined by plaintiff's counsel, testified:

The price of the property was $150,000, but was put at $137,500 at Mr. Camden's request, because they thought the amount would look a little large, you know, probably, in dealing with some other parties they were about taking in at the same time. That was the impression on my mind. He didn't tell me, but made the request that it should be put at that amount.

The conveyance made by the Messrs. West of the real estate mentioned in the contract to the Baltimore United Oil Co. was then offered in evidence by plaintiff, who here closed his case.

JOHNSON N. CAMDEN, defendant, testified as follows:

In the early part of 1877, I think it was, as far as I recollect—I am reasonably certain as to the date—the Camden Consolidated Oil Co., at Parkersburg, of which I was president, commenced doing a branch business here in Baltimore first, in opening a warehouse for the handling of oils shipped from Parkersburg and Pittsburgh—commenced by opening a warehouse, buying property, and erecting a wharf for storage, for the shipment of oil—loading and shipping of oil from Parkersburg and Pittsburgh to this port by the Consolidated Oil Company and the Standard Oil Co., and its connections at Pittsburgh. At the same time the Camden Consolidated
76 Oil Co. bought and commenced running what is known as the Jones & Merritt refinery, at Canton; commenced business regularly here. During that summer and fall, under the advice and direction of the Standard Oil Company, I was requested to see what arrangements could be made to consolidate the oil business of Baltimore. In pursuance of this idea I had several conferences with West & Co., prominent oil dealers here, first, as to an arrangement with himself—with the firm of C. West & Co. alone, making an arrangement with the Standard Oil Company, which nothing came of; and afterwards, later in the fall, I conceived the idea, or the idea was conceived, of buying all the refineries in Baltimore at their fair cash value and forming a joint stock company, a corporation that would own all these refineries, and giving to each refiner that sold his property the privilege of taking 33 per cent. of the purchase-money in stock. It was only a privilege. The negotiations did not proceed upon the basis that any one was to take the stock; but in case they preferred the stock to the money they could have the privilege of taking to that amount; no more, but as much less as they desired. Under this arrangement we commenced conferences with the refineries. Perhaps Mr. Robert Read was the first one. He placed a value upon his property; as far as I recollect, the property was taken at his price; then it progressed with other refineries; they placed their prices upon their property. Brown, Hamill & Co., perhaps, were the next. I think they were paid what they asked for their property, or if not entirely what they
77 asked, within a very small concession, may be; I think they asked $110,000 and were paid $100,000, but I won't be sure

about those prices; but the negotiations proceeded, paying to each refiner about the price he asked for his property. Mr. Read elected to take a portion of his in stock. Brown, Hamill & Co. were paid somewhere between $100,000 and $120,000; they elected to — out of the business and take all in money; and so on through. Messrs. Poultney and Moale were not in the refining business as a firm, but in the commission business, buying and selling for refiners here. Knowing that the effort then in contemplation would destroy their business, we stated to them that we would make a fair arrangement with them to compensate them for the loss that would result to them from having all the business under the control of a company that would do its own buying and selling. They made an estimate of their profits and agreed to take $15,000 a year as compensation for giving up their business, and would devote their time and service to the new company in any respectable position to which they might be assigned. That was closed with them upon that basis. They afterwards became members of the new organization—officers of the new organization. The Messrs. West remained out of the organization. They asked more for their property than we were willing to give. I was acting for and under the direction of the Standard Oil Co. I was acting under the advice and in consultation with Mr. Vilas, of the Standard Oil Co., and with Mr. Archibold, who were present in the city during most of the ne-
78 gotiations, and were in conference with me in reference to the whole proceeding. I think they had personal conferences with Mr. West at the time, as they had had with him in New York before under other propositions.

As I was saying, arrangements had been made with nearly all the refiners which were satisfactory to them and the company which it was proposed to form, and the organization was so far advanced; its purpose was to go on and form this company without reference to Mr. West—leave him out of it, so I understood. The agreement with Mr. West is dated 15th day of December, 1877. We left Mr. West out. Steps were taken to form the company, and we had come to the conclusion that we would not make any further efforts to induce Mr. West to go into the company. However, as the company proceeded to organize without him, he became more anxious to continue negotiations and to go into the company. All the property that had been purchased from the refiners was based upon the cost of their refineries—what they had expended, what their plant, what their construction account showed they had expended in the works; therefore the value of their works. Mr. West claimed at first that his property had cost him $90,000. Afterwards he said he had left some things out of the calculation, and it had cost him $100,000. That, upon the basis that we purchased all the other property for, should have been the price of his property. He asked $50,000 for his good will—an item that had never been taken into
79 consideration in the purchase of any other refineries, and therefore an item I was unwilling to agree to, representing the Standard Oil Co. The other gentlemen with whom I was in consultation were not disposed to agree to it. It was upon

that which the split took place for weeks and perhaps months before, because these negotiations had, in one shape and another, been in process for half of the year—three or four months, at any rate; that made the property $150,000. Finally, under the advice of my associates and at their request, I made him an offer of $125,000, to include everything except the stores he had in the house, and the oil, store and lamp fixtures, which were not embraced in the negotiations for the refinery. He declined that, and I declined to do anything more for the time; but afterwards, under advice, I made a proposition to him to split the difference and make it $137,500; that he declined to do. I stated that we were giving him terms that we had not given to the other parties that were going into the company, and that I was unwilling to make any further concessions; that it was not fair to the other parties, and that I would not do it; that they were putting in their property, some taking stock and some not taking stock; but it was loading the company with, unnecessarily, a large capital, and I did not make any further propositions. But while Mr. Vilas and Mr. Archbold were here they stated to Mr. West, in order to close the thing up—it wasn't a material thing with the Standard Oil Co.—and that they would give the difference and not charge it to the United Oil Co.; that they would take
80 it upon themselves. In that way C. West & Sons were paid $150,000.

In that negotiation with Mr. West it was the purpose of the Standard Oil Company to make a local organization of this company in Baltimore—to employ the same men who had been in the refining business in their individual capacity, to give them employment in the Baltimore United Oil Co. In my conversation with Mr. West I stated that that was the purpose of the company, and that in case he came into the organization I thought he would be a suitable man to make vice-president of the company. I told him that that was the purpose of the Standard Oil Co.; that he would be a suitable person to make vice-president of the company, and that I thought it would be done; that all the refiners that did come into the Baltimore United Oil Co., retaining stock in it, received positions of one kind or another as officers of the company. The contract was closed with Mr. West, as you will see, for $137,500 in money. In none of the contracts, as far as I remember, was there any obligation resting to take any stock, but there was a verbal understanding that they could come in and take stock not to exceed thirty-three and one-third per cent., if they desired to do it. As I stated before, several of the parties did not elect to take stock, and they were paid in full in money. Mr. West did elect to take some stock, and took the stock. Now, those who sold out clear were not employed in the new company; they were out of the business. Those who did take stock in the new company received employment in the new company in one shape or other, although
81 there was no special contract to that effect, except with one or two parties—Poultney and Moale, for instance, who had nothing to sell but their business; and where it required no capital to invest with them we simply compensated them for a business

that they gave up and for their services to be given to the new company—a contract with them to pay them each $7,500 a year for five years.

As far as I recollect, we made no contract with any one else but Messrs. Poultney & Moale, who were officers, or were in the management of the company. We had some contracts with some parties outside, arrangements for a certain time, of which I think there were two or three. There was no arrangement with Mr. West for any specified term of contract. There was no contract with Mr. West, or agreement, that the company was to give him employment for any definite time, or at all. It was simply a statement that we desired him to associate himself in the management of the business, and that we would make him vice-president of the company.

In all of this Mr. West knew of the whole proposition on my part, and that everything was on behalf of the Standard Oil Co., as its representative. There was no pretense that I was doing anything for myself in the matter; it was simply as the agent of the Standard Oil Co., and when the stock was subscribed I subscribed it as trustee for the Standard Oil Co. and transferred it immediately to the proper place in the Standard Oil Co. There were persons authorized to act as trustees for the Standard. Mr. George H. Vilas
82 at that time was the person designated by the Standard to hold those trust properties. I think the certificate was issued in my name, as trustee, and I assigned it in blank at once, and it went into the possession of Mr. Vilas. I never owned a dollar of stock in the Baltimore United Oil Co., myself; I never pretended to own any. Mr. Vilas was at that time the officer of the Standard Oil Co., according to my recollection, who held the stock in trust.

The company was organized, and Mr. West came in. Mr. West was elected vice-president of the company at a salary of $5,000. That was to have been Mr. West's salary. Mr. West, at the time this company was being organized, insisted on a salary of $6,000, which I declined to make it. He said he couldn't live well on less than $6,000, and he kept on insisting that he should have a salary of $6,000. That summer I was going to Europe, and Mr. West thought of going along, and I was anxious he should go. He mentioned that he could not well go on a salary of $5,000. I told him that if the Standard Oil Co. would agree to it I would recommend that they should increase his salary to $6,000. The president of the Standard agreed to it, and Mr. West's salary was amicably raised to $6,000 that year. The second year the contract, I will say, of Poultney & Moale was made with the Camden Consolidated Oil Co., representing the Standard Oil Co., or perhaps directly with the Standard Oil Co.—I don't remember—and I told Mr. West the second year exactly the terms of the contract with Messrs. Poultney &
83 Moale; and that while the Baltimore United Oil Co. was only paying them $5,000 the Standard Oil Co. had relieved the extra burthen to the Baltimore United Oil Co. and was paying them $2,500 each additional salary. Then Mr. West commenced to complain that his salary ought to be that much, which I resisted, and told him that C. West & Sons had received a very large price for

their property; that they were in the business, and that they were entirely different from Messrs. Poultney & Moale, who had nothing to sell but their business, and that that contract was not founded upon their individual services to the company, but it was founded upon the purchase of their business, in which no capital nor no property was transferred, and the only way they could be compensated for the business they gave up was by a guarantee for a certain fixed amount for five years, which they were willing to accept as an equivalent for the business they had given up, and transferring their personal attention to the Standard Oil Co.; but that thing went on. Mr. West was very urgent and very decided, and finally I told him I would speak to the Standard Oil Co.; if they would agree to add the other, that I had no objections to it. I did speak to them, and they said if I thought it was best to do it, why to make Mr. West's salary that much and that they would pay it and relieve the Baltimore United Oil Co. from that addditional responsibility. That, I think, was in 1879. The first year the company was formed—the first year was 1878—he had an increase of salary of $1,000. In 1879 he had it increased to $7,500. In 1880, then he made a demand for, I
84 think, $12,000 and an additional amount for his brother, Ed. West, and placed it upon the sole ground that they were young men, and that they could not afford to spend the best part of their lives in making only a comparative living; unless the Standard Oil Co. would increase their salaries, they must resign and commence business for themselves in competition with the Standard Oil Co. I reasoned this matter with him, but he was very determined and very inexorable on the question. I submitted the matter to the Standard Oil Co. and protested against that increase, but the Standard Oil Co. thought it best to yield to it for the time. The next year Mr. West demanded a salary of $15,000, which this correspondence that has been read here refers to. As one of the letters indicated there, I insisted that I should not be compelled to make that proposition to the Standard Oil Co., and stated, though, that if he insisted on it I would do it. I think that is the tenor of one of the letters there. He did insist on it, and I submitted the matter to the Standard Oil Co., but protested against doing it; but they decided to do so, and it was done. There was never any grounds stated by Mr. West for this increase other than that he must make that much money or he must go into a business where he could make it, and he knew no other business but the oil business, and that he would start a refining business here in competition with the Standard Oil Co.

He told me on the second occasion, when his salary was raised to $12,000, that he would resign and commence business;
85 and the first increase, if I remember, commenced in July, and the demand was made considerably before that time, and that he must know in time to make his arrangements to go into business by the first of July. He repeated the same thing when it was raised to $15,000, and said that unless he got that salary he

would resign and go into business; that he knew no other business than the oil business, and that he must look to that.

Mr. West during this period of five years that he was in the service of the company was in intercourse with the officers of the Standard Oil Co. continually about his business, and was directly in close consultation with the Standard Oil Co., and they were, to a large extent, directing the policy of the company. Mr. West was the active executive officer of the company; he had constant and frequent interviews with the Standard Oil Co. in reference to the business of the Baltimore United Oil Co. In reference to any guarantee or any statements of any particular amount of dividends that this company would earn, to my knowledge there was never anything said upon that subject in connection with the basis of any contract or connected with any contract. My opinion was asked as to what the value of this stock would be and what its earnings would be. Mr. West had been as long in the oil business as I had, and knew as much about what the company ought to earn as I would, and I said that it looked to me that, with the capital stock of this company and the business of the company, the
86 company ought to earn from 30 to 40 per cent. It was a mere opinion, as we all have when we are entering into a corporation.

Cross-examined for plaintiff by Mr. WALLIS:

Q. You say that you had intended, in consequence of the high price which the Messrs. West put upon their property, although you had formed a scheme of consolidation which was to embrace all the existing forms [firms] here, to go on without the property and concurrence of C. West & Sons in consequence of their demands?

A. Yes, sir.

Q. Were not the Messrs. West the largest house here?

A. Well, they hadn't the largest refinery, but they had the largest home-trade, what we designate as home-trade, business in this city.

Q. Who had the largest refinery?

A. My impression is that the refinery of Brown, Hamill & Co. would make more oil.

Q. Were not the Messrs. West regarded as the largest house in the business here?

A. They were the largest house engaged in what is known as the home trade, but not the largest house known as the foreign export trade. We call the home trade the oil that is sold for consumption in Baltimore and the territory that is contiguous, that buy their oil in Baltimore.

Q. You mean the Baltimore market, then?

A. Yes, sir.

Q. They were the largest in that market?

A. Yes, sir.

87 Q. Was it not essential for you in forming this new arrangement here of consolidation to have their participation?

A. Well, it wasn't any more essential to us than it was to them.

There would have been a very sharp competition between this company and Mr. West, and it was as important to him to avoid that as it was to us.

Q. Provided you went on without him?

A. Yes, sir.

Q. Nevertheless, you regarded his position as such in his intercourse with you as to entitle him to demand a larger compensation than the others did?

A. He made that a ground for claiming more, but at the time and for six months previous the Consolidated Oil Co. had been in very sharp competition for the home trade.

Q. The Camden Consolidated had an office here, had it?

A. Yes, sir; on Exchange Place.

Q. Where was the principal office?

A. At Parkersburg.

Q. You were president of that company?

A. Yes, sir.

Q. There was a sharp competition for the home trade with the private firms that were engaged in that business?

A. Yes, sir; with the Baltimore refineries.

Q. Anterior to the formation of the Baltimore United Oil Co.?

A. Anterior to the formation of the United Oil Co.

Q. How long before this corporation, the Baltimore United Oil Co., was formed had you come to terms with the Messrs.
88 West? There are but two days' difference between the agreement they signed and the incorporation of the company. Had they not come to an understanding some time before that with you?

A. I don't think they had. Of course I can't say positively in regard to a day, but I know that I had notified all the other companies that we could not deal with Mr. West on fair terms, and we would organize and not take Mr. West in. We would organize on a basis that did not include him.

Q. You have stated that the large increase which was made from time to time in the salary of Mr. West was not founded in any degree (and you endeavored to illustrate it by showing the figures) upon the idea of lack of dividends upon the part of the United Oil Co., but because Mr. West threatened to go into business himself—to leave the company, and knew no other business than that of refining, and to start in opposition to your company?

A. Yes, sir.

Q. Then the anticipated opposition of Mr. West was sufficiently important to induce you to make those large increases of his salary which you have stated, commencing at $5,000 and going up to $15,000, notwithstanding the large dividends that were made?

A. It wasn't satisfactory to me, but the Standard Oil Company advised me that it was better not to break up the harmonious relations for a little money; that it would be cheaper to them, perhaps, to make the increase.

Q. Simply to make it harmonious, and not for any purpose

89 of interest at all. It was not because you thought it would be injurious to you?

A. Yes; it was a matter of money. There is no doubt about that. Mr. West understood that perfectly. That was the ground that Mr. West thought he could bulldoze the company.

Q. And, according to your statement, the company thought it had better be bulldozed than to have Mr. West in opposition to it?

A. It did, and he succeeded from the beginning to the end.

Q. There was no agreement, I understand, from you at all, no contract at all, either on your part or the Standard Oil Co.'s or anybody else, that Mr. West should have any employment in the company?

A. No, sir.

Q. It was a mere suggestion?

A. It was a mere suggestion that he could have the position in the company.

Q. That he could have it?

A. Yes, sir.

Q. What did that suggestion amount to?

A. It amounted to the assurance that he could have it if he desired to accept it.

Q. For how long?

A. For no given time. It was stated, not as part of any agreement or anything else, in talking of the policy of the company, men who gave satisfaction in the business, that they never made changes; always acted in good faith; that they retained their em-

90 ployees, and that there never was any changes made in it.

Q. It was part of the suggestion made to him that he might go into the employment of the company if he desired, and that your people never made changes?

A. That that was their usual habit—not to make changes except for cause. Mr. West never claimed that he had any arrangement, and never claimed that he was——

(Mr. WALLIS:) All that you have stated in your examination-in-chief.

(The WITNESS:) I will say that Mr. West never stipulated that he was to be vice-president.

Q. I understood you to say that when the price that was to be paid to the Messrs. West for their property was finally agreed upon it was, according to your view, too exorbitant a price, and that the $10,000 which was added over and above the $2,500 which was paid for the personal chattels was a voluntary offer upon the part of Vilas and Archbold, saying that they would pay it out of their own pockets?

A. No, sir; I was misunderstood if you understood it in that way. What I meant to say was this, that I objected and refused to do that as negotiating for the Standard Oil Co. and in the interest of this Baltimore United Oil Company. They had as much right—in fact, they were nearer the Standard Oil Company than I was, and I had to be governed by their advice; but I stated that I didn't think it

was fair to the Baltimore United Co. to put the property in on the same basis with the other property, and it wasn't fair to the
91 others to put it in at $150,000, and I wasn't willing to be the instrument to do that. They said they would take that responsibility for the Standard Oil Co. and let the Baltimore United Oil Co. be charged with $137,500.

Q. That they would give the difference and not charge it?

A. That they would act for the Standard Oil Co.; that they would take that responsibility.

Q. At that time what was your relations with the Standard Oil Co.?

A. I was a director in the Standard Oil Co. and had charge of the business of the Camden Consolidated Oil Co., which was a branch or connection of the Standard Oil Co. I had charge of the company in Baltimore.

Q. You were a director, you said, of the Standard?

A. Yes, sir; at that time.

Q. You sign or subscribe here as trustee. What does that mean?

A. I subscribed for the stock—for all the stock that is outside what was taken by the Baltimore parties; I subscribed that for the Standard Oil Co.

Q. How did you call yourself trustee?

A. It was simply a designation that I was not doing it individually. They furnished the money to pay for it and I acted as trustee. I immediately transferred the stock in blank to the Standard Oil Co. or those who represented it; never kept the stock in my possession or charge. It was at once transferred over to the Standard Oil Co.

Q. Did I understand you to say, Mr. Camden, that Mr.
92 Vilas was present at the execution of this contract?

A. Yes, sir.

Q. Or did you merely say that there were some things in it written in his handwriting?

A. My recollection is that he was present.

Q. It is only an impression?

A. Yes, sir; that he was present; that he filled it up, and that the payments were made through Mr. Vilas; the payments of the money there he filled up. My recollection is I wasn't present myself when that was filled up; I wasn't well; but my recollection is very distinct on that subject, I will say.

(Examination concluded.)

93 JOHN D. ARCHBOLD, called for defendant, sworn:

I reside in New York city, and am in the oil business in connection with the Standard Oil Co. I am an officer of the Standard Oil Trust Co. I took part personally in the negotiations with the Messrs. C. West & Sons which terminated in the purchase of their property under the contract in evidence. I was here personally. I had interviews and intercourse with Mr. West, the plaintiff, during those

negotiations. He was aware at that time of my relations and of the interests I represented in those negotiations.

I had known Mr. West some time prior to that; had talked with him in reference to the oil business, and he knew I came here at that time representing the Standard Oil Co. in behalf of this negotiation. He knew also that the negotiation was on behalf of the Standard Oil Co. Mr. Vilas, another officer of the Standard Oil Co., was here present during those negotiations; he was known to Mr. West at that time to be an official of that Co.

Mr. West, while acting here as an official of the Baltimore United Oil Co., was more or less in communication from time to time with the Standard Oil Company. He visited the office of the Co. in New York on business connected with the company here, I think, many times.

Questions by defendant's counsel:

—. There has been offered in evidence here a letter dated October 14th, 1882, which Mr. West says was written by you, in
94 which you say: "In view of the early termination by limitation of the five-year contracts made in connection with the business of the Baltimore United Oil Co., we desire, at your earliest convenience, to have a conference with you in relation to that business. Will you kindly at once confer with Mr. Thomas Poultney, Jr., secretary, and Mr. Geo. N. Moale, treasurer, and ask them to come here with you for such conference. Please advise me at your earliest convenience when we may hope to see you. Very truly yours, J. D. Archbold." Do you remember the occasion of that visit?

A. I do. The reference which I make in this letter, "In view of the early termination by limitation of the five-year contracts," grew out of the fact that at the time that letter was written I was under the impression, wrongfully, that there was a five-year contract with Mr. West as there was with Messrs. Poultney & Moale.

Q. When Mr. West came on what did he say with reference to the contract that he had?

A. After the subject was presented, as outlined in the letter, he said, There is no contract on my part.

Q. Did you ever have any conversations with Mr. West with reference to his position with the Baltimore United Oil Company?

A. I had.

Q. State what he said upon the subject.

A. Subsequent to the interview to which reference has just been made—I can't fix the date, perhaps a month later—Mr. West came
95 to New York and had an interview with myself and Mr. Brewster, of our company, at which interview the subject of his relation to the company was fully discussed and his retirement from the position was fixed upon.

Q. In that conversation—you say the fact of his retirement was announced to him then—in that conversation did Mr. West lay any claim of any kind or say anything as to his right to hold the position—any contract that he had to hold an office under the company?

A. He urged nothing else than the fact of his relation to the business, and that he felt it was a mistake for us to part with his services.

Q. I do not ask you to state the particulars of the conversation. You did state to him then that the company intended to terminate his connection—that the Standard Oil Company intended to terminate his position—with the Baltimore United Oil Company?

A. Yes, sir; to dispense with his services.

Q. That was how long before the expiration of that year? It appears it was on the 15th of January following that the meeting took place here.

A. It must have been in December.

Q. In that conversation will you state whether any reference was made to the subject of the increase of his salary; and, if so, what was said on that subject?

A. I said to him that we had the feeling that he had been very unfair in his exactions as to salary, and that we desired, on account of the onerous and excessive salary as it then existed, to break the relation with him.

96 Q. What did he say in reply to that?

A. He said that he had only striven to get the best he could for himself.

Q. I believe I asked you the question whether, at that time or any other time, he ever claimed that he had any right to remain in the employment of the company—any contract or right to do so?

A. He set up no such claim.

Q. In that conversation the subject of his removal or his not being re-appointed was talked of fully, I understand?

A. Yes, sir.

Q. Did you ever meet Mr. West with Mr. Camden while these negotiations were going on here in Baltimore?

A. I think I did. I can't say with absolute positiveness. I was here for some days on that business exclusively.

Cross-examined for plaintiff:

—. What is the difference between the Standard Oil Company and the Standard Oil Trust Company?

A. The Standard Oil Trust Company is an association of gentlemen who hold in trust the interests of the various companies that are popularly known as the Standard Oil Company.

(By Mr. MARSHALL:)

Q. Who held the stock that the Standard Oil Company took in this company?

A. The Standard Oil Trust.

Q. In voting stock held in a company like this by this trust who directed the votes and managed it?

97 A. The trustees. Certain parties are elected as trustees. That is in their discretion entirely. The present Standard Oil Trust was formed the first of January, 1882. There was prior to that substantially the same arrangement, but not in the formal

shape that at present exists. There was no formal title prior to the first of January, 1882.

Q. The trust, then, was formed long after the organization of the company here?

A. The present Standard Oil Trust—there was a trust.

Q. What did the first trust consist of?

A. A declaration in favor of a number of gentlemen who acted in the same capacity as the present trustees in the holding of these various properties.

Q. Did not those trustees, in fact, manage the whole affairs of the Standard Oil Company?

A. They did not in the early history of the business, but at present they do. It was formerly managed by a board of gentlemen who were chosen by the various companies who were represented in this ownership.

Q. Who represented this United Oil Company in the trust anterior to 1882?

A. I should say that Senator Camden did. I will correct my answer, in that Senator Camden was not one of the board of trustees at that time. There was none existing.

Q. There was no board at that time existing. There was a number of gentlemen designated by the respective companies?

A. Yes, sir.

98 Q. What I want to know is whether upon the organization of the United Oil Company here Mr. Camden was designated to be a member of that trust.

A. I don't think there was any such designation.

Q. Then there was no designation from all the companies. It was only from some of them?

A. The trust represented the ownership of all the interests, this among the others. Whether this company had any voice or exerted any voice in the selection of a representative in the board of direction, board of management, I can't say.

Q. You have told me that this formal trust has existed since 1882?

A. Yes, sir.

Q. You have told me that there was a previous trust which was composed of gentlemen, designated by their respective companies, who were affiliated with the Standard Company; the present trust was not formed until 1882; that a board composed of these gentlemen existed before. Be good enough to say who represented this company here, from the time of its organization down to 1882, in that informal board?

A. Mr. Vilas. I think Mr. Camden was not trustee at any time. He was at that time a director of the Standard, to the best of my knowledge. I know the fact that he was a director from having heard him say so. There were changes from year to year. I am willing to testify that he was. He has not at all times been a

99 director in the Standard Oil Company. To the best of my recollection, he has not been for some years lately. He has no connection with it at all in an official capacity, to my

knowledge. He is president of the Camden Consolidated Oil Company. The ownership of the stock of the Consolidated Oil Company is in this trust of which I speak. Mr. Camden is appointed president, therefore, by the trust; he has the relation of being designated by that trust to preside over the Consolidated Oil Company. He was designated in the same way to preside over the United Oil Company that was formed here. He is, to the best of my knowledge, a stockholder in that company, and was so at the time of the formation of this United Oil Company, and had a considerable interest in it.

Q. Are you quite positive that you ever had any interview with Mr. Camden and Mr. West together here? I understood you to speak doubtingly on the subject.

A. I should say that my impressions are entirely in favor of the fact that I had. I couldn't state it positively.

Q. You are quite sure that when Mr. West went on to New York, at the time he was notified he was to be removed, that he urged that he was very useful to the company, and that they would make a mistake in parting with his services?

A. He urged the fact that he had been in the business from its inception—that sort of consideration only.

Q. He put it upon no ground of right at all?

A. He put it upon no right of agreement.

Q. Did he put it on no ground of right?

A. He thought it would be equitable to continue him, and
100 urged his relation with the company.

Q. I want to get at the fact whether he urged that he had any right to stay there.

A. If you mean by right obligation, I say no. He asserted no obligation in that respect.

Q. No obligation upon the part of the company to have him continued?

A. No obligation upon the part of the company to have him continued, other than as a business consideration.

Q. Entirely independent of any right on his part to make the demand?

A. Yes, sir.

Q. He never told you he had any agreement with anybody that he should remain there?

A. He did not.

Q. You were not aware of any private agreement between him and Mr. Camden?

A. I was not, and had never known of any agreement.

Q. Of any sort?

A. No, sir.

(Examination concluded.)

101 GEORGE H. VILAS, called for defendant, sworn:

(By Mr. MARSHALL:)

Q. State where you reside.

A. I reside in New Jersey, and am connected with the Standard Oil Company as secretary. I was connected with the Standard Oil Company of Ohio about 11 years, and was connected with the Standard at the time of the purchase of the West property here, in the same relation. My connection with the Standard Oil Company then was that of an agent—confidential employee—without official distinction. I was here; took part in the negotiations which resulted in that purchase, to some extent. I met Mr. West with Mr. Camden. Those interviews—the subject of conversation was for a final closing up, if possible, of the negotiations in respect to the purchase of West & Sons' property and putting it into the proposed new company.

Q. Were you present when the contract was signed? Look at that paper and see if you recognize anything on it that will refresh your memory.

A. (After inspection.) I can't recollect being present when the signatures were placed to the paper. I recollect being present when the final agreement was reached in respect to it.

Q. Who was present when the final conclusion was reached?

A. I don't recollect anybody but Mr. Camden and Mr. W. C. West, the plaintiff.

Q. Is any part of that paper in your handwriting?

A. The express consideration named is in my handwriting.

Q. The amount of money as written out there?

A. Yes, sir.

102 Q. And that, you say, was at the conclusion of the negotiations that you wrote that out?

A. Yes, sir; after it was positively agreed upon, the trade was consummated.

Q. Can you tell the jury whether or not Mr. West in those negotiations knew on whose behalf, for whom, and for what the property was being bought?

A. Upon my coming to Baltimore, at Mr. Camden's request, to assist him if possible in concluding these negotiations was my first meeting with Mr. West, to whom I was introduced by Mr. Camden as of the Standard Oil Company.

Q. You were introduced as of the Standard Oil Company by Mr. Camden?

A. Yes, sir.

Q. Then Mr. West knew on whose behalf the negotiations were being conducted?

A. Certainly.

Q. There are some letters here which Mr. West has testified are in your handwriting, some of them having the Standard Oil Company's heading. I will read one of them:

"NEW YORK, *January* 16, 1882.

"Mr. W. C. West, Baltimore.

"MY DEAR SIR: I enclose herewith drafts of Second National Bank, Cleveland, on Manhattan Bank, New York, Nos. 57343 and 57344, each $5,000, one draft payable to the order of yourself and one payable to the order of E. R. West, which completes the payments for 1881, in accordance with private agreement with Mr. Camden. Please send to me the receipts of yourself and Mr.
103 E. R. West for this remittance, and believe me

"Yours truly,

"GEORGE H. VILAS."

Will you please state what private agreement with Mr. Camden is referred to in that letter.

A. Well, so far as I knew about it, it was simply advice from Mr. Camden to me that he had made arrangements whereby they were to receive that sum of money, and requesting me to remit it. I was not connected with the Baltimore United Oil Company at first. I think I was elected a director as it entered upon either its second or third year. I believe at the meeting at which Mr. West was not re-elected I was elected vice-president of the company. I did not receive any salary. I was elected vice-president without salary in January, 1883. I attended some of the meetings of this company after I became a director. I can't recall that I ever had any conversations with Mr. West with reference to his relations to the company at any time while he was in its employment as vice-president. We had interviews and talks affecting the general business of the company at different times. Mr. West was fully aware of the interests that the Standard Oil Company had in the Baltimore United Oil Company. He fully understood it. I was elected a director at the stockholders' meeting held on the 16th of January, 1880. That was the first time, I think, that I was elected a director, and was brought here by Mr. Camden to assist him in the negotiations he was having with Mr. West, and was introduced to him by Mr. Camden as an agent of the Standard Oil Company. I don't know as he used
104 the term "agent." He introduced me as Mr. Vilas, of the Standard. Perhaps that was all the expression.

Cross-examined for plaintiff:

My recollection does not serve me as to whether I was present at the execution of the contract. I don't recollect anything about the placing of the signatures to the contract, and was present when the final conclusion was reached by which the transfer from the Messrs. West to the company was agreed upon. I had been at two of the previous negotiations—I don't recall but two—on one day, and then the following day, when the conclusion was reached. Those two days furnish my only recollection of interviews, at which I was present, between Mr. Camden and Mr. West. As Mr. Camden stated it to me, Mr. West insisted upon a round sum of $150,000, and he was not willing to accede to it. He had offered $137,500, and we talked

privately ourselves about it—Mr. Camden, myself, and Mr. Archbold. Of that my recollection is that $2,500 covered some horses and wagons which had not been embraced in the schedule before, leaving $10,000 as additional bonus; and my own judgment was we had better close it, and assented to it; that while Mr. Camden's opinion and judgment that the first sum of $137,500 was all, in any justice, the Baltimore United Company should be chargeable for the property conveyed, we finally decided to pay the $150,000.

Q. The only thing to which your mind was directed was the difference between the money ultimately paid and that which
105 Mr. Camden thought was proper to be paid?

A. Mr. Camden had made the proposition of $137,500 before I came into the matter at all; it was resting on that.

Q. And the other matter was submitted to your consideration, and you finally adopted the conclusion arrived at?

A. We agreed to pay that sum ourselves as an additional cost of our stock. When I went into the office, as vice-president, of the Baltimore United Oil Company I went in without any salary. I did not come here to Baltimore, and had no participation in the management of the concern. I was receiving a salary already from the New York company at that time. My acceptance of the vice-presidency here did not involve me in any inconvenience or any change in my position or action.

Q. Mr. Marshall has called your attention to the letter in which a private agreement is spoken of and asking your explanation of it. You say that, so far as you know or recollect, you had been advised by Mr. Camden that he had made an arrangement whereby those people were to have this money, and asking you to remit it?

A. Yes, sir.

Q. And you remitted it accordingly?

A. Yes, sir.

Q. Without asking any questions?

A. I am quite sure I had been advised by Mr. Camden before of such an agreement having been made with Mr. West that they should receive for that year so much money. He undoubtedly called my attention to it about the time the remittance should
106 be made, and I stated in my letter of remittance, "In accordance with the private agreement," &c.

(Examination concluded.)

(The further hearing of the case was adjourned until Monday morning at 11 o'clock.)

107 The case being closed, the plaintiff offered two prayers, as follows:

First Prayer for Plaintiff.

Refused.

Although the jury may find from the evidence that in negotiating with Messrs. C. West & Sons for the transfer of their property

and business to the Baltimore United Oil Company of Baltimore County the defendant acted as the agent of the Standard Oil Company and was known to the plaintiff to be so acting, yet if the jury believe that the defendant was himself largely interested in the Standard Oil Company as a stockholder and in the organization of the Baltimore United Oil Company as a means of enlarging its business and profits and promoting his own consequent interest, and believed it necessary or important to the successful organization of the Baltimore United Oil Co. and the promotion of his own interests that Messrs. C. West & Sons should sell to it their property and business and withdraw from competition with said company, and, so believing and in order to induce the plaintiff to consent to such sale and withdrawal, the defendant made with the plaintiff, on his own individual behalf, as the plaintiff has testified, the contract, to which likewise the plaintiff has testified, then the defendant agency of the Standard Oil Company and plaintiff's knowledge of it, as hereinbefore stated, are no bar to plaintiff's recovery in this action.

108 *Second Prayer for Plaintiff.*

Refused.

If the jury believe from the evidence that the defendant was himself largely interested in the Standard Oil Company as a stockholder and in the organization of the Baltimore United Oil Company of Baltimore County as a means of enlarging its business and profits and promoting his own consequent interests, and believed it necessary or important to the successful organization of the Baltimore United Oil Company and the promotion of his own interests that Messrs. C. West and Sons should sell to it their property and business and withdraw from competition with said company, and that the plaintiff was unwilling to unite with his copartners in the sale and transfer of their said property and business to the said company, and the defendant, to induce the plaintiff to unite with his copartners in selling and transferring their said business and property to the said company, contracted and agreed with the plaintiff individually that if he would so unite in said sale and transfer he should have a permanent position in said company, as testified to by the plaintiff, and that, by reason of said contract and promise and relying thereon, the plaintiff did, with the knowledge and consent of his copartners as to said contract and agreement made with the plaintiff individually, unite with his copartners in the sale and transfer of the said property and business, and did withdraw
109 said business from competition with the said company; and shall further find that the defendant, in pursuance of said contract with the plaintiff, procured the appointment of the plaintiff to the position of vice-president of the said company, and that the plaintiff accepted the same in accordance with said contract and entered upon his duties as such officer and continued in the discharge of the same for the term of five years and until he was removed therefrom, and that such removal was made at the instance of or by

the procurement of the defendant without cause; and shall further find that the plaintiff was willing and tendered himself willing to fulfill the duties of the said office and to continue permanently to do so, then their verdict must be for the plaintiff for so much as they may find he has been damaged by the failure of the defendant to comply with his said promise and agreement.

Both of which were refused.

The defendant offered seven prayers, as follows:

Defendant's Prayers.

1. Granted.

The defendant prays the court to instruct the jury that if they find that the alleged contract between the plaintiff and the defendant that the said plaintiff should have permanent employment as an officer of the Baltimore United Oil Company, at a salary of not less than $5,000 a year, or as much as any other officer of
110 said company received, was made in contemplation that the defendant was to be an officer of said company and to control a majority of its stock, and that by the use of his official position and of the control of said ownership of stock he was to retain said plaintiff in office and fix his salary, as admitted by the said plaintiff, then their verdict must be for the defendant upon the issues joined in this case.

2. Refused.

The defendant prays the court to instruct the jury that if they find that before the execution of the paper, dated the 15th day of November, 1877, offered in evidence, negotiations had been pending between the defendant and the firm of C. West and Sons to effect the contract set forth in said paper, and if they find that the direction and control of said negotiations and the arrangement of the terms of sale by C. West & Sons to the Baltimore United Oil Company of the property and rights mentioned in said contract were entrusted to the plaintiff and his father, Christopher West, as representatives of said firm; and if they further find that the alleged promise on the part of the defendant that plaintiff should have permanent employment as an officer of the Baltimore United Oil Company at a salary of not less than $5,000 a year, or as much as any other officer of said company, was one of the terms mentioned in the course of said negotiations and constituted a part of the consideration offered to said C. West & Sons to induce them to make said sale to
111 said Baltimore United Oil Company; and if they find that when the terms of the agreement between the parties was reduced to writing in the form of the contract above mentioned the said subject of the employment of said plaintiff as an officer of said company was not inserted in said contract, then the evidence offered under exception as to the terms of said alleged agreement to employ the plaintiff as an officer of said company is not legally admissible, and there is no evidence in the case legally sufficient to enable the plaintiff to recover upon the issues joined in this suit.

3. Granted.

The defendant prays the court to instruct the jury that even if they find that the defendant verbally promised the plaintiff, as part of the consideration for the execution by him of the contract offered in evidence, dated ——, that plaintiff should have permanent employment as an officer of the United Oil Company of Baltimore at a salary of not less than $5,000 a year, or as much as any other officer of said company, and that plaintiff agreed that he would accept such employment and serve said company on those terms, the plaintiff cannot recover on such verbal contract and their verdict must be for the defendant.

4. Refused.

The defendant prays the court to instruct the jury that if
112 they find that in all the negotiations between C. West & Sons and the plaintiff, on the one hand, and the defendant, on the other, which resulted in the contract between C. West & Sons and the Baltimore United Oil Company, offered in evidence, the plaintiff knew that the defendant was acting as the agent and representative of the Standard Oil Company and not on his own behalf, and that all the proposals made to C. West & Sons and to the plaintiff by defendant to effect said contract was [were] made by defendant as agent of and on behalf of said Standard Oil Company and not on the defendant's own individual account, then the plaintiff could not lawfully hold the defendant individually responsible for the alleged breach of a contract so made, unless at the time of making it it was understood between plaintiff and defendant that said agreement was made upon the personal credit of said defendant and not with defendant as agent of said Standard Oil Company.

5. Refused.

The defendant prays the court to instruct the jury that even if they find that at the time of the sale by C. West & Sons to the Baltimore United Oil Company, offered in evidence, the defendant promised the plaintiff that plaintiff should have permanent employment as an officer of said company at a salary of not less than five thousand dollars a year, or as much as any other officer of said company, yet as plaintiff admits that he was made vice-president of said company at a salary of $5,000 a year, and that it was as much as any other officer
of said company, and that at his own instance and request
113 his contract was changed from time to time, so that when he was dropped from the service of said company he had a salary of $15,000 a year and had had the same for two years, the plaintiff had voluntarily altered his alleged original contract, and there being no evidence that he had any agreement with the defendant that the employment he had at the time he was dismissed would be permanent, and he having himself altered his alleged original contract, he is not entitled to recover in this action.

6. Refused.

The defendant prays the court to instruct the jury that the plaintiff has offered no evidence legally sufficient to entitle him to recover in this action, and their verdict must be for the defendant.

7. Granted.

The defendant prays the court to instruct the jury that the plaintiff has offered no evidence legally sufficient to sustain the allegations contained in his amended declarations and is not entitled to recover in this action.

The 1st and 7th of which were granted by an united court and the 3rd by a divided court, and the 2nd, 4th, 5th, and 6th were refused.

And to the refusing of the plaintiff's two prayers and the granting of the defendant's 1st, 3rd, and 7th prayers, and each of them, the plaintiff excepted, by his counsel, and prayed the court to sign
114 and seal the bill of exceptions, which is accordingly done this ninth day of October, 1886.

THOS. J. MORRIS, *Judge.* [SEAL.]

The defendant's attorneys hereby assent to the signing of the foregoing bill of exceptions by the court.

Balto., Oct. 9th, '86.

MARSHALL & HALL,
Def'ts Att'ys.

Ruling and Opinion on Prayers.

In ruling upon the prayers the circuit judge said:

The defendant's first prayer asks us to instruct the jury that if the alleged contract between plaintiff and defendant, as stated in the declaration, was made in contemplation of defendant's becoming an officer in the United Oil Company of Baltimore County, and of his having control of a majority of its stock, and that by the use of his official position and ownership of stock he was to procure the plaintiff to be elected an officer of that company and permanently retained in the service of the company at a salary of not less than $5,000 a year, then the alleged contract is void as against public policy.

115 There is no allegation or proof that there was at any time such a contract for permanent employment directly with the company, or that the existence of such a contract with defendant was known to all the stockholders of the company; so that it resulted, if the contract be upheld, that whenever the question of retaining the plaintiff in the company's service at $5,000 a year came to be voted on the defendant's vote was to be influenced by the fact that he was to be liable to the plaintiff in large damages unless the company retained him. Either the company must pay him $5,000 a year or the defendant must make it good to him out of his own pocket.

This state of facts serves clearly to bring the case within the principle of the ruling in Fuller *vs.* Dame, 18 Pickering, and Guerney *vs.* Cook, 120 Mass.—that is to say, it was a contract the purpose and effect of which was to influence the defendant as a stockholder and officer of the company "in the decision of a question affecting the private rights of others by considerations foreign to those rights," and the defendant by the contract was placed under direct and very powerful "inducement to disregard his duties to other members of the corporation who had a right to demand his disinterested action in the selection of suitable officers." He was to be in a relation of trust and confidence which would require him to look only to the best interests of the whole, uninfluenced by private contracts.

116 We think this salutary rule is applicable in this case, notwithstanding the alleged contract was not corruptly made for private gain on the part of the defendant. There were other stockholders in the company. The defendant and the Standard Oil Company, for whose benefit it is alleged the contract was made, were not all the stockholders, and it seems to us that it was certainly the right of those other stockholders to have the defendant's judgment as an officer of the company exercised with a sole regard to the interests of the company. We therefore grant the defendant's first prayer.

The defendant's second prayer we refuse.

The defendant's 3rd prayer asks us to hold that the alleged contract, not being in writing, is not sufficient to charge the defendant because it is an agreement not to be performed within the space of one year from the making thereof, within the meaning of the 5th clause of the fourth section of the statute of frauds.

In my opinion, as the employment contracted for, according to plaintiff's testimony, was to begin at a future time and was to be an employment by the year at an annual salary and was to be permanently continued from year to year, it must have been, according to his own testimony, a contract which both parties understood was not to be completed within a year, and therefore no action can be brought upon it unless in writing.

117 Judge Morris differs from me on this point and thinks that the exceptions sustained by some of the decisions cited in argument are sufficient to take this case out of the statute as one depending on the contingency of life and which would be completely performed by the death of the plaintiff happening within the year. I do not think that a contract to procure for another permanent employment at an annual salary is within the reasoning or principle of those cases.

The defendant's 4th prayer we refuse, and also his 5th and 6th prayers.

The defendant's 7th prayer asks us to say that the plaintiff has offered no sufficient evidence to sustain the allegations of the amended declaration.

The alleged contract being, for the reasons we have already stated, presumably void on grounds of public policy, there must be affirmative proof to sustain the allegation of the amendment that the defendant "was and continued able, lawfully and properly and to the

interest and advantage of said company and with and by its full consent and approval and that of its stockholders, to retain the plaintiff in the employment of said company."

We do not find any evidence to this effect which, in our judgment, could be properly *be* submitted to the jury, and we therefore grant the defendant's 7th prayer.

It follows that the plaintiff's prayers must be refused.

118 *Prayer for Writ of Error. Filed 13th October*, 1886.

In U. S. Circuit Court, District of Maryland.

WILLIAM C. WEST
vs.
JOHNSON N. CAMDEN.

The plaintiff moves for a writ of error to the Supreme Court of the United States for the correcting of errors of and upon the judgment in the above-entitled cause.

S. T. WALLIS AND
E. CALVIN WILLIAMS,
Att'ys for Plaintiff.

Let the writ of error issue.

THOS. J. MORRIS, *Judge.*

And thereupon the said plaintiff, by his attorneys aforesaid, produced the writ of the United States of America for the correcting of errors of and upon the premises, commanding that the judgment aforesaid, so as aforesaid rendered, with all things thereunto relating, be transmitted to the Supreme Court of the United States to be held at Washington on the second Monday of October next; which said writ is as follows, to wit:

119 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the district of Maryland, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between William C. West, plaintiff, and Johnson N. Camden, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings

aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the 14th day of October, in the year of our Lord one thousand eight hundred and eighty-six.

[The Seal of the Circuit Court, Maryland.]

JAS. W. CHEW,
Clerk of the Circuit Court of the United States,
District of Maryland.

Allowed by—
THOS. J. MORRIS, *Judge.*

[Endorsed:] Writ of error.

120 *Writ of Error Bond. Filed 14th October*, 1886.

Know all men by these presents that we, William C. West and Christopher West, of Baltimore city, State of Maryland, are held and firmly bound unto Johnson N. Camden in the sum of five hundred dollars, current money, to be paid unto the said Johnson N. Camden, his certain attorney, executors, administrators, or assigns; to the payment of which, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 14th day of October, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately, in the circuit court of the United States for the district of Maryland, in a cause in said court wherein the said William C. West was plaintiff and the said Johnson N. Camden was defendant, a judgment was rendered against the said plaintiff, from which said judgment the said plaintiff has sued out a writ of error to the next term of the Supreme Court of the United States, to be held at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said William C. West, the plaintiff in error, shall prosecute his said writ to effect and if he shall fail to make his plea good shall
121 pay all costs adjudged against him by the said Supreme Court, then this obligation shall be void; otherwise to be and remain in full force and virtue.

WILLIAM C. WEST. [SEAL.]
CHRISTOPHER WEST. [SEAL.]

Signed, sealed, and delivered in the presence of—
HENRY T. MELONEY.

The aforegoing bond is thus endorsed, to wit: "Bond approved. Thos. J. Morris, judge."

In pursuance whereof, and according to the statute in such case made and provided, a record of the judgment aforesaid, with all

things thereunto relating, together with the said writ of error annexed, is hereby transmitted to the said Supreme Court accordingly.

Test: JAS. W. CHEW, *Clk.*

122 The United States of America to Johnson N. Camden, defendant in error, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Maryland, wherein William C. West is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

The Seal of the Circuit Court, Maryland.

Witness my hand and the seal of the said circuit court on this 14th day of October, in the year of our Lord one thousand eight hundred and eighty-six.

THOS. J. MORRIS. [SEAL.]

Service of citation acknowledged on this 15th Octo., 1886.

MARSHALL & HALL,
Att'ys —.

[Endorsed:] West *vs.* Camden. Citation.

On this — day of ——, in the year of our Lord one thousand eight hundred and eight—, personally appeared —— —— before me, the subscriber, —— ——, and makes oath that he delivered a true copy of the within citation to —— ——.

Sworn to and subscribed the — ——, A. D. 188–.

—— ——.

123 UNITED STATES OF AMERICA, *District of Maryland,* } *To wit:*

I hereby certify that the foregoing is a true transcript of the record and proceedings of the circuit court of the United States for the fourth circuit in and for the district of Maryland in the thereinentitled cause.

In testimony whereof I hereto set my hand and affix the seal of the said circuit court on this 20th day of October, A. D. 1886.

[The Seal of the Circuit Court, Maryland.]

JAS. W. CHEW,
Clerk of said Circuit Court.

Endorsed on cover: Maryland C. C. U. S. No. 278. William C. West, plaintiff in error, *vs.* Johnson N. Camden. Filed December 21, 1886.

Office Supreme Court U. S.
FILED,
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JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the U. S.

October Term, 1889,

No. 278.

WILLIAM C. WEST, PLAINTIFF IN ERROR.

vs.

JOHNSON N. CAMDEN.

BRIEF OF PLAINTIFF IN ERROR.

S. T. WALLIS,
E. CALVIN WILLIAMS,
for Plaintiff in Error.

JOHN MURPHY & CO., PRINTERS AND PUBLISHERS, BALTIMORE.

Supreme Court of the U. S.

October Term, 1889.

No. 278.

WILLIAM C. WEST, PLAINTIFF IN ERROR.

vs.

JOHNSON N. CAMDEN.

BRIEF OF PLAINTIFF IN ERROR.

The action in this case is assumpsit, and was instituted by the Plaintiff against the Defendant in Error, in the Circuit Court for the District of Maryland on the 20th of April, 1883. It was not reached for trial until October, 1885, and the illness and absence from the country, of counsel, delayed for a considerable period the preparation of the Bill of Exceptions.

The cause of action was an engagement alleged to have been entered into by the Defendant with the Plaintiff in Error, in December, 1877, to give to the latter permanent employment as an officer of the Baltimore United Oil Company, a corporation about to be formed at the time, at a salary of not less than five thousand dollars per annum. The Plaintiff in Error was a member of the

prominent firm of C. West & Sons, of the City of Baltimore, which had been engaged for about twenty-five years in the refining of petroleum and dealing in oils generally (Rec., pp. 10 and 11). Their works were the largest in the vicinity of the city and had only recently been enlarged and put in first class order and equipment. The business of the house had been very large and was increasing considerably from year to year. It had a large export trade and an extensive connection in the South (Rec., p. 10 and 11) as testified by the Plaintiff himself, and it was admitted by the Defendant to be the largest house in the Baltimore home trade. (Rec., p. 41.) The Defendant was, at the time, a Director and one of the Trustees of the Standard Oil Company and was also President and had charge of the Camden Consolidated Oil Company, of Parkersburg, a branch of the Standard Oil Company, which had for some months been doing business in Baltimore and had been "in very sharp competition for the home trade" with the Baltimore private refineries. (See Camden's own testimony, Rec., pp. 36, 42, 44.) As to what the Standard Oil Company and the Standard Oil Company Trust were, and what Mr. Camden's relation to them was, see also the testimony of Mr. Archbold, pp. 46 to 48 inclusive.

In this state of affairs the Standard Oil Company thought it desirable to "consolidate the oil business of Baltimore," and requested Mr. Camden to see what arrangements could be made for that purpose (Camden, Rec., p. 36). Various negotiations were entered into, which resulted in a scheme of the Standard Oil Company to buy out all the private refineries, and form a joint stock company that would own them all, giving to each refiner, who sold his property, the privilege of taking thirty-three per cent (33 per cent.) of the purchase money in stock (Camden, p. 36 of Record, West, p. 12). The Messrs. West, after considerable negotiation, finally agreed with Mr. Camden as to the price to be paid

for their factory. But the Plaintiff in Error and his brother were not willing to go out of the oil business, and when Camden proposed their doing so, as part of the arrangement, they refused, peremptorily, to agree to it (Rec., pp. 12 and 16). As West subsequently stated to Camden, (Rec., p. 40) "he knew no other business but the oil business." Their father, the senior partner of the house, was also unwilling to consent that the business should be given up, unless his sons were secured "some permanent positions—something to depend on" (Christopher West, Rec., p. 35), as they had not sufficient capital of their own to take the business in their own hands (West, p. 12–16 of Rec.) and he himself desired to withdraw. Mr. Camden accordingly proposed (pp. 12 and 35 of Rec.) that the Plaintiff in Error and his brother should be provided with permanent situations at fair salaries, in the new Company (Rec. p. 12), and especially that the Plaintiff in Error should have a permanent position, at $5000 a year salary, or more, or as much as any other paid official of that Company. (Rec., top of p. 13). That proposition was finally accepted by the younger Messrs. West, and on the faith of it the Plaintiff in Error consented to join in the agreement for the sale and purchase of their property (Rec., p. 13) which was then consummated. The senior partner, Mr. Christopher West, expressly testifies (Rec., foot of p. 35) that he would not have made the sale, but for Camden's engagement to give permanent positions to his sons in the proposed Company, and declares that Camden so promised him. (Rec., p. 35). While it is not disputed that the Plaintiff in Error was aware that in the transaction which resulted in the purchase of the property of his house, Camden was acting as the agent of the Standard Oil Company, (Rec., p. 34) of which he was Director and Trustee, the Plaintiff in Error distinctly testifies that, in his own transactions with Mr. Camden he had no contract with the Standard Oil Company and had no reference to its responsibility. He

says (Rec., p. 34): "I did not know to what extent Mr. Camden was interested in the matter, but I did know this, that I made the arrangement with him personally and paid no attention to who his backers were." And again (*Ibid.*): "I gave credit to Mr. Camden, and relied on his engagement in entering into the contract I have spoken of. I had known him between 18 and 20 years." Still further, he says (Rec., p. 33): "I had no contract with the Standard Oil Company. I had nothing except the agreement that I had with Mr. Camden, which I looked to Mr. Camden for. I knew Mr. Camden to be a very responsible man and I didn't go beyond that. I had known Mr. Camden for so many years, and considered him a very responsible man and capable of fulfilling promises made, and I took his promises as binding on his part." The familiarity of their relations will appear from some of their correspondence (pp. 24 and 25). The purport of Camden's stipulation is best summed up in West's own words (Rec., foot of page 28): "Mr. Camden said that I should be employed; that he would guarantee me permanent employment, at a salary of not less than $5000; that he would guarantee it to me. I did not ask him from whom." On cross examination (Rec., p. 29) he further explained, as follows:

Question.—"Who did he say would employ you?"

Answer.—"He would."

Q.—"Do you mean to say that you understood Mr. Camden was himself going to employ you?"

A.—"Mr. Camden would see that I had permanent employment."

Q.—"By whom?"

A.—"I did not go beyond his assurance. I considered him responsible to make such statement."

Q.—"Permanent employment?"

A.—"Yes, sir."

Q.—"For what; to do what?"

A.—"In the management of that Company and the business."

Q.—"Who was to be your employer?"

A.—"Mr. Camden. He gave me the assurance and I looked to him for it. Mr. Camden was to employ me in connection with the new Company."

Q.—"His promise was that somebody else should do something for you, was it not?"

A.—"No, sir."

Q.—"His promise was that the Company should employ you?"

A.—"He was to be President of the Company, and I supposed he would remain there and continue me and keep me in the position as Vice-President and general manager. If he was to be the President and hold five-sixths of the stock, and continue to hold it, it was a surety that I should remain in the position."

The written agreement under which the property, stock, &c., of the Messrs. West passed from them will be found on p. 13 of the Record. It was executed to the new corporation, which in the meantime had been formed under the title of the United Oil Company, and it will be seen that it not only conveyed all the property (being the oil works, &c.) of the Messrs. West in Baltimore County, but "the good will and successorship" of their business there, as well as "the good will and successorship of their business at their store in the City of Baltimore."

The Defendant in Error, on the other hand, testifying on his own behalf, insisted that whatever he said and did throughout the dealings in controversy, with the Messrs. West, was entirely on behalf and in representation of the Standard Oil Company and not on his own part, and that the Plaintiff in Error fully understood this to be the fact. He declared, however, that there was no agreement, either on his part, or that of the Standard Oil Company, or anybody else, that Mr. West should have any employment in the new Company (Camden, Rec., p. 43). The following is his statement in chief (Rec., p. 38):

"In that negotiation with Mr. West it was the purpose of the Standard Oil Company to make a local organization of this Company in Baltimore—to employ the same men who had been in the refining business in their individual capacity, to give them employment in the Baltimore United Oil Company. In my conversation with Mr. West, I stated that that was the purpose of the Company, and that in case he came into the organization I thought he would be a suitable man to make vice-president of the Company. I told him that that was the purpose of the Standard Oil Company; that he would be a suitable person to make vice-president of the Company, and that I thought it would be done; that all the refiners that did come into the Baltimore United Oil Company, retaining stock in it, received positions of one kind or another as officers of the Company." On cross examination (Rec., p. 43) he explained further as follows:

Q.—"There was no agreement, I understand from you, at all, no contract at all, either on your part or the Standard Oil Company or anybody else, that Mr. West should have any employment in the Company?"

A.—"No, sir."

Q.—"It was a mere suggestion?"

A.—"It was a mere suggestion that he could have the position in the Company."

Q.—"That he could have it?"

A.—"Yes, sir."

Q.—"What did that suggestion amount to?"

A.—"It amounted to *the assurance that he could have it, if he desired to accept it.*"

Q.—"For how long?"

A.—"For no given time. It was stated, not as a part of any agreement or anything else, in talking of the policy of the Company men who gave satisfaction in the business, that they never made any changes; always acted in good faith; that they retained their employees and that there never was any change made in it."

Q.—"It was part of the suggestion made to him that he might go into the employment of the Company if he desired and that your people never make changes?"

A.—"That that was their usual habit, not to make any changes except for cause."

As to the statement thus made by Mr. Camden that there was "no contract at all," on his part, or that of the Standard Oil Company or anybody else, that Mr. West should have any employment in the new Company, he is singularly at variance with Mr. Archbold, one of his own witnesses who, as he states, (Rec., foot of p. 44) was "an officer of the Standard Oil Company and took part, personally, in the negotiations with Messrs. C. West & Sons, which terminated with the purchase of their property, under the contract in evidence." On the 14th of October, 1882, nearly five years after those negotiations, Mr. Archbold wrote to Mr. West (who had been for all those years Vice-President of the Baltimore United Oil Company, as will hereafter be stated) a letter which will be found in the transcript, at the foot of page 17, and which is, in part, as follows:

"STANDARD OIL COMPANY.

NEW YORK, *October 14th*, 1882.

"W. C. WEST, ESQ.

Vice-President Baltimore United Oil Company,

Baltimore, Md.

"*Dear Sir:* In view of the early termination, by limitation, of *the five year contracts made in connection with the business of the Baltimore United Oil Company*, we desire at your earliest convenience to have a conference with you in regard to that business, &c."

On being asked by Camden's counsel (Rec., p. 45) whether he remembered the occasion of the visit of West and others to New

York in consequence of that letter, he answered: "I do. The reference which I made in this letter, 'In view of the early termination, by limitation, of the five year contracts' grew out of the fact that *at the time that letter was written I was under the impression, wrongfully, that there was a five year contract with Mr. West, as there was with Messrs. Poultney & Moale.*" The latter gentlemen were among the Baltimore Oil refining men who had gone into the United Oil Company with West, and had been, like him, its salaried officers, from its organization. West testifies (Rec., p. 18.) and it is not disputed, that there were five year contracts made with those other parties. He specifically denies, however, that there was any five year contract with him, and Archbold admits, as above, that he was mistaken in supposing that there was any such. How he could have gone on, as a leading manager of the Standard Oil Trust, for five years, in constant communication with West (Rec., p. 45) as Vice-President of the United Oil Company, under the impression that West was in, under any contract at all—unless some contract had been entered into in the original transaction with the Messrs. West, in which he (Archbold) and Camden had jointly intervened—would, like the conflicts of statement between Camden and West, have been a matter for the Jury, if the case had been permitted to go to it.

The Court would not have been troubled with this narrative of facts, had it not been necessary, as well for the appreciation of the legal questions to be presented, as for a general understanding of the case.

The Baltimore United Oil Company was duly incorporated under the General Corporation Law of Maryland. The certificate will be found on p. 14 of the transcript. It bears date December 13th, 1877, two days before the conveyance from the Messrs. West. (Rec., p. 13.) Messrs. W. C. West and Mr. Camden were among the five corporators. These were composed entirely of the Balti-

more oil men, who had gone into the arrangement, and Mr. Camden. The last named gentleman was made a corporator in his individual name. The new Company was organized on December 18th, 1887. As will be seen by the minutes (Rec., p. 30) the whole capital stock was subscribed for (6,000 shares) by Camden and the Baltimore oil dealers who had sold out to the Company. The Plaintiff in Error took 458 shares and paid in cash the assessment of 70 per cent. required, being $32,060. Camden subscribed as "J. N. Camden, Trustee," and paid $354,130, which was the amount of his assessment. As has been already mentioned, all the Baltimore oil men who came in were appointed to official positions. (Rec., p. 31.) Indeed, with the exception of the Presidency, which went to Camden himself, at a salary of $5,000, all the offices were given to the Baltimore men. West was made Vice-President, at a salary of $5,000, and was put upon the executive committee of three. "He was the active executive officer of the Company," (Camden, Rec., p. 41.) When he was removed, at the end of five years, from his place, the Standard Oil Company wrote to him thus, under date of November 24th, 1882, (Letter in Rec., p. 78) "The Standard Oil Company desires to express the kindest consideration for yourself and their appreciation of the integrity and fidelity with which you have managed the affairs of the Company." From the beginning to the end of the record, there is not a suggestion of doubt as to his continuing capacity to discharge the duties of his office, or of any failure on his part in efficiency and intelligence.

As above stated, Camden subscribed for the stock which he took in the Baltimore United Oil Company as "Trustee." He says (Rec., p. 44) that he did this "as simply a designation that he was not doing it individually." The Standard Oil Company, he testifies, paid the subscription money and he "at once" transferred the stock, in blank, to that Company "or those who represented it" and never kept it in his possession or charge. Certain it is,

however, that he continued in control of the Company down to the time of the removal of Mr. West from the Directorship and Vice-Presidency, and that he intervened in the affairs of the Company, not only as President, but personally in the payment of the increased salary which Mr. West from time to time received. (Camden, Rec., pp. 39–40, Correspondence, pp. 21, 27, 25.) It will be seen from the two letters of Mr. Vilas, the confidential agent of the Standard Oil Company (Rec., p. 49), which appear on p. 21 of the transcript, that in making remittances to Mr. West, for his own account and his brother's, of moneys paid them for salary, in addition to that portion which was paid by the United Oil Company, Mr. Vilas puts the remittances down to the personal agreement of Camden. In the letter of July 15th, 1882, (Rec., p. 21) he describes it simply "as per agreement," but in that of the next day, July 16th, (Rec., p. 21) he says that the remittance "completes the payments for 1881, in *accordance with private agreement with Mr. Camden.* What this "private agreement" was, and whether it was not the agreement testified ~~in~~ by Mr. West, Mr. Camden himself was not asked by his counsel to explain. Mr. Vilas, however, when called by the Defendant, testified in chief (p. 50) that "so far as he knew about it, it was simply advice from Mr. Camden to him that he had made arrangements, whereby they were to receive that sum of money and requesting him to remit it." On cross examination, he qualified the statement by saying (Rec., p. 51) that he is "quite sure" he had been advised by Mr. Camden before, of an agreement having been made with Mr. West that they should receive so much money "for that year." Camden, he adds, "undoubtedly" called his attention to it, about the time the remittance should be made. But whether the payment was in fulfilment of Camden's general "private agreement" with West, or "an agreement" confined to "that year" (1881) only, there is no denial of and no escape from the fact, that it was Camden who

dealt with West, in regard to his compensation, all through, and that by the very terms of Vilas' letter (Rec., top of p. 50) the remittances then made "completed the payments for 1881," which must have been made under some agreement or other of Camden's.

At the annual meeting of the stockholders of the Baltimore United Oil Company, on January 15th, 1883, (See Minutes, Rec., p. 22) Camden was present, together with the Baltimore stockholders, who were employees, and two or three of the Standard Oil Company men. West was left out of the Directorship. He protested, on the ground that he was next to the largest stockholder, and should be represented in the Board. Five thousand, eight hundred and fifty-seven shares of stock were voted, and of these, all but West's own shares, (458) were polled for his exclusion. On the same day (Minutes, p. 22) the Directors met, and, *on motion of Camden himself, Vilas was chosen Vice-President in West's place.* How much stock Camden voted does not appear, but he was there as a stockholder, which of course he could have had no possible right to be, if it had been true, as he swore (Rec., middle of p. 39), that he "never owned a dollar of stock in the Baltimore United Oil Company," and "never pretended to own any," but had assigned, "at once," to Mr. Vilas, the certificate issued to him (Camden) for the whole stock he had subscribed for as "trustee." It is curious, however, to note, in this connection, that while Camden swears, throughout, that he represented the Standard Oil Company, and no one else, and especially did not represent himself, personally, in his negotiations with the Messrs. West and the other Baltimore oil dealers for the purchase of their property, it is distinctly stated, in the minutes of the meeting at which the United Oil Company was organized (Rec., top of p. 31), that the purchase of "various refineries and refinery interests in the City and County of Baltimore" had been made "in the interest of the United Company, to the amount of $148,150, *under a contract, for such purchase, with*

the Camden Consolidated Oil Company, of which Camden was President, and in which Vilas testifies (Rec., top of p. 48) that Camden had a considerable interest, as a stockholder, when the United Oil Company was formed. The contract referred to with the Camden Consolidated Company was produced, approved and ordered to be filed at the meeting of the United Oil Company, and the Treasurer was directed to pay the amount of purchase money named. (Minutes, top of p. 21 of Rec.)

The ostensible reason for the removal of West is stated by Vilas (Rec., p. 46) to have been the "feeling," on the part of the Standard Oil Company, that he "had been very unfair in his exactions as to salary, and that *we* desired, on account of the onerous and excessive salary as it then existed, to break the relation with him." The same thing is indicated, though less specifically, by Camden, in his own testimony. (Rec., p. 40.)

It appears, that when negotiations were going on with the Wests for the purchase of their property, Camden stated that the profits of the new Company would undoubtedly enable it to pay yearly dividends of 40 per cent. (West, Rec., foot of p. 12; Christopher West, p. 35.) He stated this, according to the proof cited, with great positiveness, though it is of course admitted by West (Rec., p. 30) that he did not guarantee it. Camden himself states that he only said (p. 41) as a matter of "opinion," that "it looked to him that with the capital stock of the Company, and the business of the Company, the Company ought to earn from 30 to 40 per cent." He added, however, that West "had been as long in the oil business as he had, and knew as much as he did of what the Company ought to earn." If this were all, there would be no occasion to consider that part of the controversy. But it is not all, and it becomes necessary to trouble the Court with a further reference to it, on account of its bearing on other parts of the case and particularly on the cause assigned for breaking relations with West.

Camden was deeply interested in the Standard Oil Company and one of its trusted agents and representatives. He of course knew, infinitely better than West, and could control, the causes and circumstances which would influence the earnings of the new Company. As one of the inducements for the Baltimore refineries to enter into the latter, Camden, as West testifies, (Rec., p. 12) had stated, that by reason of forming the Company and controlling the Southern business, the profits of the new concern must be very large and its dividends would reach the large figure just given. The control of the Southern trade was to be the great element of the Company's prosperity. While of course Mr. Camden, by himself and through his associates, could not absolutely guarantee this advantage to the new concern, he and they could plainly and were bound to abstain from doing any thing to interfere with it. Mr. West, however, soon discovered that the new Company was not earning what it ought, by reason of the intrusion of a competitive company, *belonging to the Standard Oil Company itself*, into the territory, the whole of whose business had been promised to the United Oil Company. This competitive Company was driving the United Company out of a very large portion of the territory referred to, and for this reason "the money wasn't earned which it was represented would be earned." (West, Rec., p. 17.) The expectation, thus disappointed by the very party who created it, was, as West reports (Rec., p. 17), one of the reasons of his going into the new Company. The intrusive competition to which West refers was on the part of the firm of Chess, Curley & Co. which, as he testifies further, was located at Louisville and "was a branch of the Standard Oil Company and acting for it." "They entered immediately into competition with the Baltimore United Company throughout the entire Southern territory; came up so far as to open a house in Richmond, and actually opened one in Baltimore; had a representative in Norfolk, and started a house in Wilmington, Charlotte, and quite

a number of other places, entering in direct competition, in direct quarrel and fight, with the Baltimore United Oil Company." (West, pp. 25, 26.) Against this the plaintiff in error protested to Camden and other officers of the Standard Oil Company, "but without any recourse or consideration," as he adds (Rec., p. 26), "except so far as there was an agreement made that the intrusive Company should not come above a certain line." Against this also West protested, insisting that the contract was that the whole of that territory belonged to the United Company and that Chess, Curley & Co. had no business there whatever. (Rec., p. 26.) On being asked how long the "fight and quarrel," mentioned above, had lasted, he answered (Rec., p. 26), "It exists to-day, sir."

Of the entire truth of the testimony, as to the indirect but serious interference of the Standard Oil Company with the business of the United Oil Company and the loss of the revenues of the latter therefrom, there is not one word of contradiction in the record. Camden himself does not pretend to deny it. West therefore had every reason to be dissatisfied with this breach of faith and with the pecuniary results of the new concern to him because of it. Before he went into it, his house had, as has been seen, "a very large connection throughout the South" and its average business had ranged from $20,000 per annum up to $76,000, which last figure it had reached, during the year ending in June 1887, the very year in which the negotiations with Camden were consummated. (Rec., pp. 30, 31.)

During the first year of his service as Vice-President there was no dividend, but West only demanded an increase of salary to $6,000, having learned that other officers of the Company were receiving $6,000, and his contract being, as has been stated, to receive as high a salary as any other officer. (Rec., pp. 31, 32.) The increase was granted on his demand. (p. 31.) The second year he demanded an increase of salary on account of loss of

revenue. He expressed his dissatisfaction to Camden with "the way the thing had gone." He told Camden that he had received no dividend, by reason of the competition already stated, which had been allowed to come in though the promise was to keep it out, and he complained that in consequence of it he had not received the revenue he expected from it and insisted that he must have more pay. His compensation was raised to $7,500, on his demand, for the reason assigned. It was increased afterwards to $12,000 and subsequently to $15,000 as a compensation for "an aggregated loss of revenue from his stock." (West, Rec., pp. 31, 32, 33.) All this increase was obtained through Camden (Camden, p. 40), though it appears to have been paid by the Standard Oil Company and certainly was not paid by the United Oil Company. It was only natural and proper that the Standard should pay it, the loss of revenue to the United Company, which was the cause of West's demand for it, having been caused by the bad faith of the Standard Company, practiced for its own gain.

Camden, on his part, insists that West assigned no other reason for his demands and those of his brother than "the sole ground that they were young men and could not afford to spend the best part of their lives in making a comparative living; unless the Standard Oil Company would increase their salaries they must resign and commence business for themselves in competition with the Standard Oil Company." (Camden, Rec., p. 40.) Camden says he objected to the increase but found West inexorable, and he submitted the matter to the Standard Oil Company, which "advised" him that "it was better not to break up the harmonious relations for a little money; and *that it would be cheaper to them perhaps to make the increase.*" (Camden, Rec., p. 42.) Accordingly the increase was made. Camden added that it was "a matter of money" and on that ground "West thought he could bull-doze the Company." The Company "thought it better to be bull-dozed than

to have Mr. West in opposition to it" and so "he succeeded from the beginning to the end." (Camden, Rec., p. 43.)

If it could be conceivably true that the Standard Oil Company could be "bull-dozed" by the competition of a single refiner, like West, who had parted with his oil works and his business and stood all alone, with but little capital, the estimate which it placed (according to Camden) upon the importance of escaping "West's competition," furnishes all sufficient proof of the benefit which Camden and all concerned had derived, from securing his coöperation and services in the organization and conduct of the Baltimore United Oil Company.

All of these matters however would of course have been for the Jury, had not the case been withdrawn from them by the Court. Their statement is indispensable to an understanding of the grounds on which the Plaintiff in Error was thrown overboard. It is sufficient for the purposes of his case, here, that his dismissal was on account of "these exactions as to salary" (Archbold, Rec., p. 46) and not of any pretended default in the discharge of his official duty or impairment of his ability further to discharge it, and that the alleged "exactions" were not addressed to the United Oil Company, but only to Camden and the Standard Oil Company. It is somewhat difficult, however, to understand why Camden did not refuse West the extra pay and let him resign, as he threatened; such extra pay being no part of the contract.

Pleadings.

The Plaintiff filed a declaration with ten counts, only four of which (Nos. 7, 8, 9 and 10, pp. 2 to 6 of the Record) were special. The other six (p. 2) were the ordinary common counts under the Maryland practice. It is not necessary, for the purposes of the case as presented here, to state the details of the special counts.

They present, in various shapes and with variety of technical averment, the cause of action hereinbefore stated, viz., the contract of Camden with West and its consideration on both sides; the performance by West of his part of it; his appointment to office under the agreement, and his continuance in it for five years; the faithful discharge of his duties; his readiness and willingness and his tender of himself as ready and willing to continue in the office and faithfully perform its duties; his removal without cause and against his consent and protest, and the loss and damage which he suffered from his removal and from the failure of Camden to comply with his engagement.

All of these counts were subsequently amended, and as the amendment (the same in all) is particularly referred to by the Circuit Court, in its opinion, it is here inserted, in full (from pages 6 and 7 of the transcript), as follows:

"That at the time of making his promise and undertaking aforesaid and of the acceptance of the same and the performance and execution by the Plaintiff, on the faith and consideration thereof, of his part of the agreement aforesaid, the Defendant was able and proposed and continued to be able, and represented and guaranteed to the Plaintiff that he was and would continue to be able, lawfully and properly, to procure for and continue to the Plaintiff the office and employment aforesaid in the service of the said Baltimore United Oil Company of Baltimore County, on the terms as to salary hereinbefore set forth, according to his, the said Defendant's, said promise and undertaking, which said office and employment it was for the interest and benefit of said Company that the Plaintiff should have and continue to fill at the said salary; and the said Defendant, down to and at the time of the removal of the Plaintiff from said office and from his employment in the service of said Company as aforesaid, was and always continued to be able, lawfully and properly, and to the interest and advantage of said

Company, and with and by its full consent and approval and that of its stockholders, to retain the Plaintiff or cause or procure him to be retained at said salary and in the employment of said Company, in fulfilment of his, the said Defendant's, undertaking aforesaid; but the said Defendant, nevertheless, in wilful and intended violation of his said promise and undertaking, failed and refused so to do, and caused and procured the said Plaintiff to be removed from said office and from all employment in the service of said Company and to be deprived of all salary or emolument therefrom."

The Prayers.

Two prayers only were presented by the Plaintiff in Error. (pp. 51 and 52.) The first did not ask any instruction as to the right to recover, but simply asserted the proposition, that although the Jury might find that in the negotiations with C. West & Sons, Camden acted, and was known by the Wests to be acting, as agent of the Standard Oil Company, yet if the Jury should further find that Camden, himself, had large individual interests to serve in the matter and in the organization of the United Oil Company, and believed it necessary or important to the promotion of those interests, &c., that the Messrs. West should sell out their business and withdraw from competition with the Standard Oil Company, and so believing, and in order to induce the Plaintiff to consent to such sale and withdrawal, entered into the contract alleged with West, on his own individual behalf, as proven by West, then the fact of Camden's agency for the Standard Company and West's knowledge of that fact would be no bar to the Plaintiff's recovery.

Plaintiff's second prayer (Rec., pp. 52, 53) asserted his right to recover, if the Jury should find (substantially) the contract and its consideration as proven by West; the performance by West of his part of it, and Camden's individual interest in the transaction,

and that Camden procured West's appointment in pursuance of the contract alleged and that West accepted it in accordance with the same, and continued for five years in the discharge of its duties, till he was removed, and was willing and tendered himself willing to fulfil the duties of said office and to continue permanently to do so, and that he was removed at the instance and request or by the procurement, of Camden, without cause, then the verdict must be for the Plaintiff, for so much as the Jury might find that he had been damaged by the failure of Camden to comply with his promise and agreement.

There was no specific exception taken to either of the Plaintiff's prayers, on the ground that any of the facts assumed in them were unsupported by evidence tending to establish them. The Court however refused to grant either of the prayers. (Rec., pp. 53, 55, 57.)

The Defendant in Error presented seven prayers (Rec., pp. 53 to 55) of which the Court granted only the first, third and seventh, rejecting the rest. The Circuit and District Judges united in granting the first and seventh, but the District Judge declined to join in granting the third.

The ruling and opinion of the Court on the prayers will be found on pp. 55 and 56 of the transcript.

Defendant's first prayer (p. 52) asked an instruction, that the Plaintiff was not entitled to recover, if the jury should find that the contract set up by him was made in contemplation that the Defendant was to be an officer of the United Oil Company and control a majority of its stock, and that, by the use of his official position and the control of said ownership of stock, he was to retain the Plaintiff in office and fix his salary.

The prayer asserted the invalidity of the contract, on the ground of public policy, and the Court granted it on that ground only. (Rec., p. 56.)

Defendant's third prayer asserted the insufficiency of the contract, under the fifth clause of the fourth section of the Statute of Frauds to maintain the action, it being verbal only and not to be performed within a year from its making. The Circuit Judge alone sustained this prayer (Rec., p. 56) and it was accordingly granted, the District Judge dissenting.

Defendant's seventh prayer asked an instruction, that the Plaintiff had offered no sufficient proof to sustain the allegations of the amended declaration. The Court granted it, holding (foot of p. 56 of Rec.) that as the alleged contract was, for the reasons already assigned by the Court, "*presumably void*, on grounds of public policy, there must be affirmative proof to sustain the allegations of the amendment, that 'the Defendant was and continued able, lawfully and properly, and to the interest and advantage of said [Baltimore United Oil] Company, and with and by its full consent and that of its stockholders, to retain the Plaintiff in the employment of said Company." The Court added (Rec., p. 57): "We do not find *any evidence to this effect* which, in our judgment, could be properly submitted to the jury, and we therefore grant the Defendant's seventh prayer. It follows that the Plaintiff's prayers must be refused."

The Plaintiff in Error submits that the Circuit Court erred in each and all of its rulings just cited, and makes the following as his

Assignment of Errors.

The Circuit Court erred in taking the case away from the Jury, and in each and all of the instructions and rulings which led to that result, viz:

1st. In instructing the Jury that the contract set up by the Plaintiff in Error, being verbal and not in writing, was incapable of enforcement in this suit, under the Statute of Frauds.

2nd. In holding that the contract in issue was, presumably or otherwise, void, as against public policy, and instructing the Jury that the Plaintiff could not recover upon it.

3rd. In holding that it was necessary to the Plaintiff's recovery that the averments contained in the amendment to the special counts of his declaration, should be sustained by affirmative proof or indeed sustained at all.

4th. In holding that the Plaintiff had offered no evidence legally sufficient to sustain the allegations contained in his amended declaration and was consequently not entitled to recover.

5th. In refusing the prayers of the Plaintiff in Error, whether because of their being held improper, in themselves, to be granted, or because of the rulings, already assigned as Errors, whereby the case was taken from the Jury.

The Statute of Frauds.

The learned District Judge appears, from the opinion of the Court (Rec., p. 56), to have refused his assent to the granting of the Defendant's third prayer as to the Statute of Frauds, upon the ground that as the performance of the contract depended upon the contingency of West's life, and it would have been completely performed if West had died within the year, it was not within the scope of the Statute, which "will not apply where the contract can, *by any possibility*, be fulfilled or completed in the space of a year, although the parties may have intended its operation should extend through a much longer period." This is the language of the Court of Appeals, in Ellicott *vs.* [redacted], 4 Md. Rep., 488, and is emphatically repeated in Cole *vs.* Singerly, 60 Md. Rep., 353, and Horner *vs.* Frazier, 65 Md. Rep., 12–13. In the case in 60 Md., quoting from Fenton *vs.* Emblars, 3 Burrows, 1281, it is expressly held that "a contingency is not within the Statute of Frauds, nor any case that depends upon contingency."

Turner

The application of this rule to cases where the contingency is the duration of life, is upheld by a large number of decisions, which are collected and digested in the notes of the case of Sedden *vs.* Rosenbaum, recently decided by the Court of Appeals of Virginia, and reported in 3 Lawyers' Reports, Annotated, 337, 339. Particular reference is made to

Thorp *vs.* Stewart, 44 Hun, 232, and

Carr *vs.* McCarthy, (Michigan), 14 West. Rep., 458,

where a parol contract for maintenance during life is held not within the statute, inasmuch as the party to be supported may die within a year. So also a parol contract to work for one while he lives, or any agreement to be performed at the death of another, is enforceable, notwithstanding the statute, for the reason just alleged.

Frost *vs.* Tarr, 53 Ind., 390.

This is recognized as the established doctrine in Brown on Stat. Frauds, Sec. 276, and Smith's Leading Cases (8th Am. Ed.), 619, 620, where one of the cases cited is that of

Ellicott *vs.* Turner, 4. Md. 476. see

Doyle vs. Dixon, 97 Mass. 208

In that case a parol contract to pay, indefinitely, for the education of a child, a stated sum of money per annum, was held good on the ground that the Plaintiff's performance of the contract depended upon the child's life, and that "an agreement by parol is not within the statute, when, by the happening of *any* contingency, (the italics are the Court's) it might be performed within a year," (pp. 490, 491). "There is no difference," says the Court (p. 490), "in principle, between a possibility dependent upon the volition of the individual, and one consequent upon a natural event." This decision was expressly adopted and followed in

Wilhelm *vs.* Hardman, 17 Md., 140, 147,

13.

1. Smith's L. Cases, 621.

where the contract, to which the doctrine was applied, was on the part of an infant, to work on the Defendant's farm, for seven years, in consideration of food, clothing and schooling.

And see, in further recognition of the principle and its application as above, the recent Maryland cases already cited, of

Cole *vs.* Singerly, 60 Md., 340, 353,
Horner *vs.* ~~Camden,~~ Frazier 65 Md. 1, 13.

Here, there is no question, that West's death would have terminated Camden's obligation, by its complete performance.

But, independently of this view it has been, for years, the established rule in Maryland, as will appear by the cases in 4th Maryland and 65th Maryland, just cited, that whenever the contract has been performed on the one side, the absence of a writing cannot prevent its being enforced against the other. The cases of Donelson *vs.* Read, 3 Barn. and Adol. 899, and Boydell *vs.* Drummond, 11 East. 142, are cited as establishing the true rule, which has just been stated, and although the Court recognizes the fact that there is some conflict of decision upon the point, it accepts the doctrine as the law of Maryland. (65 Md. 13.) Donelson *vs.* Read is now the recognized law of England also, having been not only followed but approved by the Exchequer (Barons Park, Alderson & Rolfe) in Cherry *vs.* Henning (4 Welsby, Hurlst, and G. 631, 635) and adopted later in Smith *vs.* Neale, (2 Com. Bench N. S., 66, 88.) The words of the Statute, "not to be performed," are held to mean "not to be performed *on either side*," and not to include "cases where the contract was performed on one side." (Per Park B. in Cherry *vs.* Henning, *ubi supra*, p. 635.)

The thing required of West, here, in consideration of which the promise of Camden is alleged and proven to have been made, was his agreement to assent to and join in the conveyance of C. West & Sons to the United Oil Company and withdraw from

the oil business—and this was consummated immediately after the promise and on the faith of it. The ninth Count of the declaration (p. 9) recites the further consideration of West's "agreeing to accept and retain the office to which he was to be appointed." This agreement was made in the same act, and the office was given and accepted a few days after.

Public Policy.

In its reasoning, sustaining the first prayer of the Defendant in Error, the Court held that the alleged contract was "presumably against public policy." The prayer itself bases the invalidity of the contract exclusively upon the hypothesis that it was made in contemplation that the Defendant "was to be an officer of the Baltimore United Oil Company, and to control a majority of its stock, and that by the use of his official position and of the control of said ownership he was to retain the Plaintiff in office and fix his salary." It will be observed that the prayer does not require the Jury to find that the agreement was secret, corrupt or collusive, or that the Defendant was to exercise his control, or use his position, in carrying out the contract, without the knowledge of his co-stockholders, or against, or without reference to their interests, or those of the corporation. It is respectfully submitted that the proposition thus stated cannot be maintained. The Court rests its opinion (Rec., top of p. 56), in favor of the prayer, upon the two cases of Fuller *vs.* Dame, (18 Pickering, 472,) and Guernsey *vs.* Cook, (120 Mass. 501), neither of which is believed to justify the the conclusion drawn from them.

In Fuller *vs.* Dame, the Plaintiff, Dame, who was the owner of a large tract of waste land, was desirous to enhance the value of his property, by having a principal place of deposit of a certain railway located at a particular point. To this end it was necessary to form an association, which would furnish the R. R. Company with

a quantity of land and pay it a large sum of money to induce it to make the location desired, and this new corporation was to purchase Dame's property as joint stock. Dame accordingly agreed with Fuller, that the latter should aid him in getting up the proposed company and in causing the railroad corporation in question to fix its terminals and its principal place of deposit at the point where Dame desired to have them. In consideration of this service to be rendered to Dame, he executed to Fuller his note for $9,600 and placed it in "certain parties' hands" to be delivered to Fuller so soon as the terms of the agreement should be complied with as to the location of the R. R. depot. This was consummated, and the note having been handed to Fuller, was the cause of action sued on. Fuller, at the time of the contract, was a stockholder of the R. R. Company concerned and was also a member of the Legislature, and took stock in the new company on its incorporation. He was likewise himself largely interested in adjacent land, which was benefitted by the R. R. location provided for, and sold it for a great advance in consequence.

The Court held the contract void, as a secret arrangement by which a large sum of money was to be paid to a stockholder and influential citizen, for his own use, on condition that he would use his influence to secure such action on the part of his corporation as would promote the private interests of a party who was to pay him, and his own, instead of the interests of the public and the Railway Company, which were alone to be consulted in the location of the proposed depot. The Court held the transaction an attempt to create and exert an "undue influence," with "all the injurious effects of a fraud upon the public."

In Guernsey *vs.* Cook, two shareholders of a corporation, in consideration of A's agreeing to purchase a part of their stock at a price named, secretly contracted to procure for A the treasurership of the corporation, and secure to him, also, a sum named as his annual

salary. In case of his removal, they were to buy the stock back from him at par. The Court held the contract void, as contrary to public policy and as a fraud on the other stockholders, who were entitled to a disinterested exercise of judgment by their associates in regard to the selection of officers, "uninfluenced by private gain." In the absence of proof that the transaction was not for the private benefit of the contracting shareholders, or that it was consented to by the other members of the corporation, the contract could not be enforced. The object of this last qualification is not clear, as the Court had expressly said: "This contract *necessarily* implies that the Defendant intended to derive and the Plaintiff intended to give him a private advantage, not shared by the other stockholders, in consideration of his election as treasurer."

The propriety of these decisions is not, for a moment, questioned —their applicability to the case at bar is, however, earnestly disputed.

The distinction between this case and Dame *vs.* Fuller, is believed to be manifest from the statement of the facts of which the Massachusetts decision was predicated. The latter belongs to a well defined class of cases, in which a party occupying a public, or fiduciary, or quasi fiduciary position, is not permitted to sell or trade away the performance of his duties, for money or other private and secret advantage to himself. The case is rightly classified, with others, by Mr. Greenhood, under the head of "Private Dishonesty" as well as "Public Policy."

Greenhood on Public Policy, 138, 139.

Woodstock Co. vs. Richmond Co. 179 U.S. 643, 654, 662

In Guernsey *vs.* Cook, the transaction was simply the secret sale of a corporate office and its emoluments by stockholders in consideration of money to be paid to them by the proper officer for their stock. It was a secret sale of their votes, pure and simple, and it is part of the case that the corrupt bargain was set forth in terms in the agreement. "The purchase of the Defendant's stock and

the agreement relating to the office are incorporated into the contract, as part of one transaction, and each agreement is the valuable consideration of the other." Greenhood (p. 139), classifies the case under the head of "Private Dishonesty" only. It is cited by Judge McCrary in his opinion on the case of the Western Union Telegraph Co. *vs.* North Pacific Railway (1 McCrary, 418–428) in support of the proposition that a contract is against public policy, when it is "to give to the officers of the company who made the contract, and to each of their successors who should maintain it, a valuable consideration for his official action in their behalf: *a consideration of a private and personal character enuring to the officers private benefit and gain and not to the benefit of the company or other stockholders.*" The same doctrine is even more forcibly stated by Mr. Justice Miller, on the circuit, in another case between the same parties (1 McCrary, 581, 594), thus: "The receipt of special advantages, whether money or property, to be kept secret from his co-partners or joint stockholders or those interested with him in the same matter," and where "they act upon the belief that he is governed by no other interest than that which is common to them all," is the statement which the learned justice makes of the rule controlling that class of cases.

In the case at bar there is no pretence of any such facts or circumstances as are the basis of these decisions. There was nothing secret, whatever, about the appointment of West or the intention to appoint him. On the contrary, as already has been shown, (*Ante*, p. 6) it was the declared purpose of the Standard Oil Company, in the formation of the United Oil Company, to give employment in the service of that company to all the Baltimore refiners who sold out to it and took stock in it, and all of them, as Camden states, (*Ante*, p. 6) "received positions of one kind or another as officers of the company." It was further admitted by Camden to have been announced by him as the policy of the Stand-

ard Company, never to make changes in officers who gave satisfaction. Camden had no personal advantage to serve, apart from that which attached to him, as a shareholder in the Standard Oil Company, by the promotion of its purposes through the new company. In other words, his interests and those of both companies were identical, and the procurement of West's association in the new company by the sale of his factory and the transfer of the goodwill and business of his firm, together with its withdrawal from the trade, were far more important to the Standard Company and its new organization than to Camden himself. He gained nothing but his share of what his companies gained. The Standard Company, his constituent, was thoroughly aware of and assented to the employment of West as Vice-President of the United Oil Company and Mr. Archbold, its representative and one of its leading officers, with Camden in the organization of the latter Company, not only knew as has been shown that all the Baltimore refiners were to have offices, but that five year contracts had been made with them to that effect, and he was for five years under the impression that there was such a contract with West also, (*Ante*, pp. 7 and 8). Mr. Vilas, chief auditor of the Standard Oil Company, (p. 20 of Rec.) paid West's extra allowance. There were no subscribers to the stock of the United Company except the Standard Company (through Camden) and the Baltimore refiners (to a comparatively moderate amount). The latter certainly were not opposed to employment looking far into the future, for they all shared in it, and the Standard Oil Company not only did not object to Camden's management in that regard, but left the whole control with him and went on paying West's additional compensation as agreed on, from time to time, by him. Indeed, so absolutely did they place themselves in his hands that when he ultimately objected to West's demands for increased pay, they only "advised" (*Ante*, foot of p. 15—Rec. p. 42) him as to what he should do in regard to it.

Of course, the alleged contract of Camden with West implied, as matter of law, a covenant on the part of the latter, that he should be and continue fit for the place he was to fill and faithful and competent in the discharge of its duties. That he was and continued competent and did efficiently fulfil his obligations is not questioned. (*Ante*, p. 9.) The importance and extent of his services is attested by the fact that he was "the active executive officer" of the United Company during his whole continuance in office, and a member of its executive committee. The value of his co-operation is best demonstrated by the fear of his going again into competition with the United Company, and the fact that the extra pay which he received was treated by the Standard Company as "a little money," which it would be "cheaper" to pay, than to let West and his brother "resign and commence business for themselves in competition with the Standard Oil Company." (*Ante*, p. 15.)

It is respectfully urged, therefore, that there was not a single element in the contract here sought to be enforced, nor in the circumstances surrounding or relating to it, which brought it within the widest reach of the principle of public policy enforced in the cases which have been cited. Nobody was deceived by it, or could have been injured by it, and neither party could have had any advantage from it that was not honest and legitimate. The Standard Oil Company in reality owned and was to control the United Oil Company through Camden. It owned all the stock, except what was subscribed for by the local oil men, who took it in part payment of the price to be paid for their factories and business, their being employed as officers of the company being dependent on their so subscribing. (*Ante*, p. 6.) Indeed, as Mr. Camden testified (*Ante*, p. 6; Rec., p. 38), it was the announced "purpose of the Standard Oil Company to make *a local organization of this company in Baltimore.*" Although as Camden says, the stock subscribed for, as trustee, may not have remained in his name, there is no pretence

that it ever ceased to belong to the Standard Oil Company, and it was all solidly voted to put West out of the directorship—Camden still acting as a stockholder and continuing to be president. Under the decision of the Maryland Court of Appeals, in a late and leading case (Booth *vs.* Robinson, 55 Md., 419, 433, 448), one corporation may lawfully take and hold the stock of another, of the same class, not only as an investment, but for the purpose of obtaining an influence in or a control over the other, though they may be rivals in business or have conflicting interests—provided there be no fraudulent design. Indeed consolidation of corporations of the same nature was a part of the statutory policy of the State of Maryland, at the time. (Revised Code of 1879, p. 318, Art. 40, sec. 36; Md. Code of 1888, vol. 1, pp. 293–4.)

It is scarcely necessary, though it may be permitted to add, that this Court has always adhered to the doctrine that when a contract is capable of two constructions, the one lawful and the other unlawful, the former must be adopted.

Hobbs *vs.* McLean, 117 U. S., 569–576.

U. S. *vs.* Central Pacific R. R., 118 U.S., 235, 240.

This rule, enforced in the case of The Oregon Steam Nav. Co. *vs.* Winsor (20 Wal., 64, 70), where a question of public policy arose, is fully recognized by the Supreme Court of Massachusetts in Guernsey *vs.* Cook, and by the Circuit Court in the two cases from 1 McCrary (pp. 427, 495), also above cited. See also Greenhood on Pub. Pol. Rule 99, p. 123, and cases cited.

The defence of public policy set up by a party to a contract which, as between the parties, is fair and honest, is characterized by the Master of the Rolls in a recent case, (Swaine *vs.* Wilson, 38 W. R., 262), as a "mean defence," and Lord J. Lindley repeats that it is "not a creditable defence," though, as he adds, "the Court must consider it, and, if well founded in point of law, must

give effect to it." This Court, with all others, has been compelled to enforce the latter rule, but never except where there was no alternative. It has never departed from the principle laid down in R. R. Co. *vs.* Richmond (19 Wal., 584, 590), where it classes among matters of "the highest moment and importance to the public welfare," even where public policy is in question, "the observance of good faith among parties and the upholding of private contracts and enforcing their obligations." And see, pointedly, to the same effect, the striking language of the late Sir George Jessel, in Printing Co. *vs.* Sampson (19 L. R. Equity, p. ~~185~~). 462)

DEFENDANT'S SEVENTH PRAYER.

If the foregoing considerations suffice, as is hoped, to show that the Court below erred in granting Defendant's first prayer, it is submitted that the theory on which his seventh prayer was granted is equally unsound. Assuming that the contract set up was presumably void, the Court held that the case could not be maintained without "affirmative proof" of certain averments in the amendment of the declaration, to remove that presumption. Their Honors then went on to determine that they found no evidence to that effect which could properly be submitted to the Jury and they consequently granted the prayer.

The prayer itself is manifestly bad, it is submitted, on its face, because instead of assuming that there was no legally sufficient evidence *in the case* to maintain the averments in question, it confined itself exclusively to evidence *offered by the Plaintiff*, excluding altogether from the Jury such deductions as they might legitimately draw from the Defendant's own testimony and his other proof on which the Plaintiff might and would have relied with great confidence.

But even if the prayer was not thus fatally objectionable it was otherwise inadmissible. It will be observed that the Court's ruling (Rec., foot of p. 56) involved the decision of two points—1st, that the contract was *prima facie* void, and 2d, that *because of this* and only because of it, the averments of the amendment were required to be established by affirmative proof. "Affirmative proof" is, in itself, a misleading phrase, for, if it means to convey the idea that any legally competent evidence whatsoever from which the jury might reasonably find the truth of the averments in question, would not suffice to maintain them, it is believed to be inconsistent with the fixed rules of evidence. But, be that as it may, the necessity of proving those averments is made by the Court to depend upon the previous ruling, that the contract was at least *prima facie* void, and the supposed necessity of the proof, of course, falls to the ground if the contract "presumably" labored under no such infirmity, as we have endeavored to show. The Court had already rejected Defendant's sixth prayer (Rec., top of page 55), and thereby refused to rule, generally, that Plaintiff had offered no evidence legally sufficient to entitle him to recover. This ruling, it is submitted, involved, logically, the rejection of the seventh prayer also, for it necessarily assumed that the Plaintiff had offered legally sufficient evidence to maintain his action, which is inconsistent with and precluded the granting of the seventh instruction. The latter, however, whether consistent or inconsistent with the rejection of the sixth prayer, is made to rest by the Court, as it was rested by Defendant's counsel, entirely upon the supposed necessity of making the particular averments in question and proving them. It is respectfully claimed, on the part of the Plaintiff in Error, that these averments were superfluous and therefore unnecessary to be proven, and that the facts assumed as the hypothesis of the Plaintiff's second prayer (Rec., pp. 52–53) were all that the Plaintiff needed to maintain his case. If the contention of this brief as to

the *prima facie* validity of the contract and the absence of anything in it to raise a legal presumption of its nullity, has been successfully maintained, there can be no question that the averments of the amendment were surplusage. But, even conceding the contrary, it is insisted that there was no ground for asserting the total absence of legally sufficient proof, on which to go before the jury in support of them. Let us consider them.

The Court, p. 57, singles out one averment, and as to that one only rules that there is no sufficient proof. It is the allegation that the Plaintiff "was and continued able, lawfully and properly, and to the interest and advantage of said Company, and with and by its free consent and approval and that of its stockholders, to retain Plaintiff in the employment of said [United Oil] Company." Can it possibly be denied that there was competent proof of its being to the interest and advantage of the Company to retain West in its employment? If his demands for increased compensation, which were set up as the cause of his removal, were unreasonable, they were not demands made on the United Oil Company, and the payment of them injured it in no way, for the increased compensation was paid by the Standard Oil Company (Rec., p. 40), for reasons of its own, and West never received more than the original $5,000 from the United Company (Rec., foot of p. 16 and p. 20). There is no dispute that he remained as capable, honest and efficient when he was removed as when he went in, and Camden might consequently have kept him in, "lawfully and properly," if he could have kept him in at all. In view of the testimony which has been condensed in this brief, can there be any just pretence that there was no evidence to prove that Camden might have kept him in if he had chosen? If the jury had found that he guaranteed the place to West, such guarantee would have estopped him from denying that he had the power to make it, as between him and

West, whatever the fact may have been, as between him and the Company. From the start, and as part of the organization of the United Oil Company, Camden "was to manage the Company, was to be at the head of the Company." (Rec., p. 33.) He remained in that position till West's removal, and he did so far control the Company, that when the Standard Oil Company discussed its policy with him as to West's pay, it only "advised" him. (Rec., foot of p. 42.) Though the stock in the United Company subscribed for by ~~West~~ Camden, as "Trustee," had been put in the names of other trustees, he appeared as stockholder at the meeting when West was put out, and his relation to the Company remained unchanged down to the removal of West, when all the stock of the Standard Oil Company was first voted to drop him from the directorship. He knew, in advance of the meeting at which West was removed (Rec., top of p. 20), that the removal was to be made, and when West recalled his attention to his promises, he signified his sense of the way in which such things are to be regarded, by saying "there were too many promises made anyhow." (*Id.*, *Ib.*) It was he, personally, at last, who moved the appointment of Poole to West's position at the directors' meeting of January 15, 1883 (Rec., p. 22), all the Baltimore oil men who were stockholders (except West and his brother) being retained in office (Rec., p. 20), but Mr. Poultney, who was transferred to an official position in the Camden Consolidated Oil Company, of which, also, Camden was President and a large stockholder. All the stockholders of the United Company had joined in electing West Vice-President at a salary of $5,000, at the organization of the company (Rec., p. 31), and continuing him in office for five years. It was the basis of the United Company and of its organization that it was "to employ the same men who had been in the refining business in their individual capacity—to give them employment in

the Baltimore United Oil Company" (Camden, Rec., p. 38). All these men who became shareholders understood this and thought it right, and had the benefit of it by contract, and they knew that West was in the same position and had the same claims as themselves. Poultney and Moale, two of them, had $2,500 each per annum from the Standard Company, in addition to their salaries of $5,000 from the United Company (Camden, Rec. foot of p. 29). It was part of the security and inducement of them all to go in, that it was the custom of the Standard Oil Company, of which the United was only "a local organization," to retain their employees and "not to make changes except for cause."

It is submitted that all of this evidence was legally competent to go to the jury, upon the issue of the amended declaration that the holders of stock other than that represented by Camden would have consented to and approved the retention of West, if Camden had urged, instead of opposing it, and that the Standard Oil Company would have done the same thing.

The attention of the Court is further called to the fact that the learned Circuit Judge, in his opinion, did not accurately quote the amendment to the narr, but overlooked a material, indeed vital part of it. The amendment averred not only that Camden "was and continued able . . . lawfully and properly, &c., to retain the Plaintiff" in the employment of said company, but added disjunctively, "or cause or procure him to be retained" (Rec. p. 7). It seems difficult to argue in the face of all the testimony that there was not any evidence on this point, that could properly be submitted to the jury. If there was any one thing in which the Standard Oil Company did not respect Camden's authority, sustain his action, and carry out his recommendations throughout—except in the advice he gave them not to pay West the increased compensation he demanded—the counsel of the Plaintiff in Error have failed to find it in the record.

If these positions are well taken, the Plaintiff's prayers were improperly refused. The second prayer, presented the law of the whole case, and the first, it is presumed, could not have been refused, if the case had been allowed to go to the jury.

S. T. WALLIS,
E. CALVIN WILLIAMS,
For Plaintiff in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889. No. 278.

WILLIAM C. WEST,

PLAINTIFF IN ERROR,

vs.

JOHNSON N. CAMDEN,

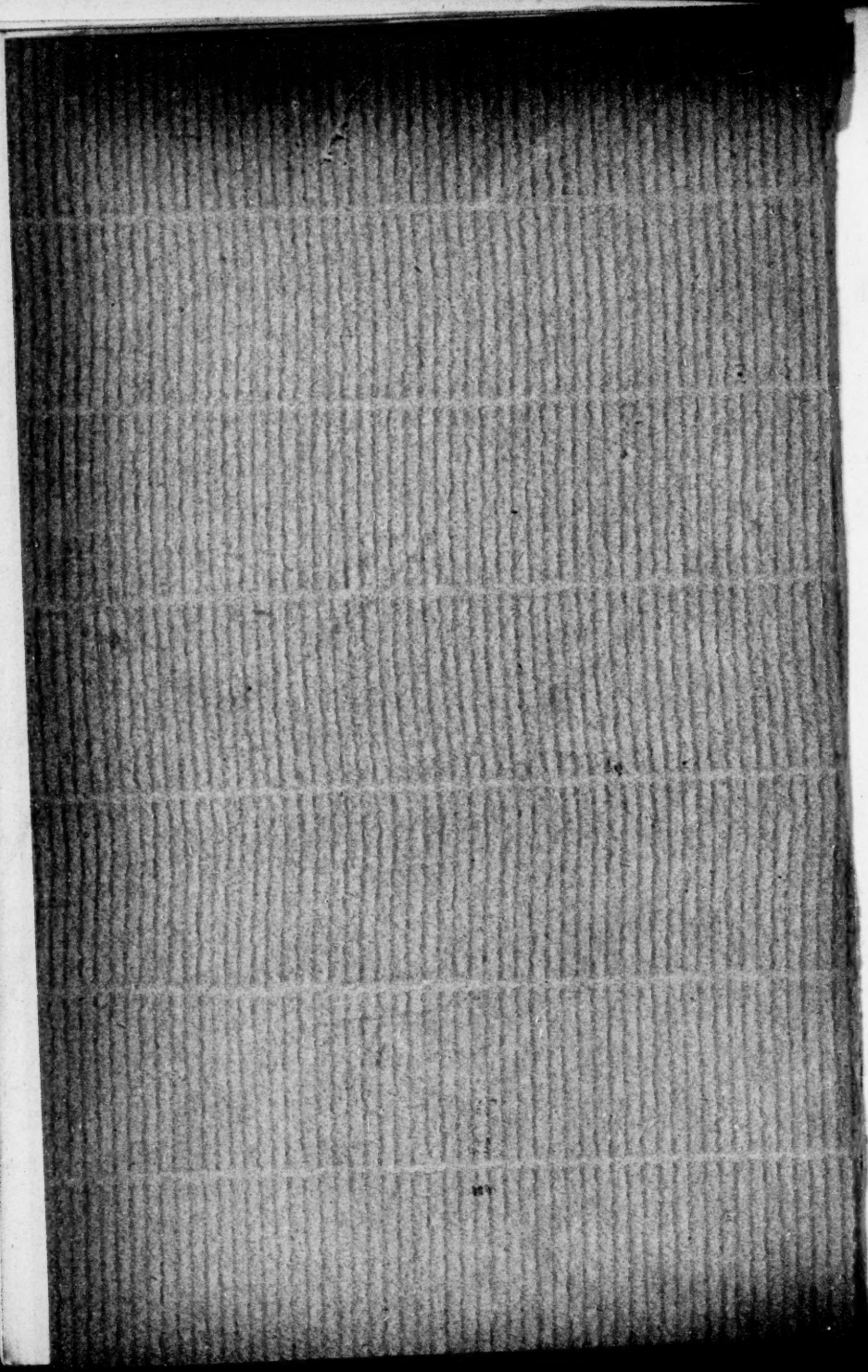
DEFENDANT IN ERROR.

In Error to the Circuit Court of the United States for the District of Maryland.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

CHARLES MARSHALL,
THOMAS W. HALL,

Counsel for Defendant in Error.



WILLIAM C. WEST,

Plaintiff in Error,

vs.

JOHNSON N. CAMDEN.

In the Supreme Court

OF THE

UNITED STATES.

OCTOBER TERM, 1889—No. 278.

IN ERROR TO THE CIRCUIT COURT

OF

THE UNITED STATES

FOR

THE DISTRICT OF MARYLAND.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

STATEMENT OF FACTS.

This is an action of *assumpsit* brought to recover damages for the breach, as alleged, of a contract on the part of defendant, whereby "said defendant undertook and agreed on his own liability that said plaintiff should be appointed to the position of vice-president of" the Baltimore United Oil Company, of Baltimore County, Md., "and retained in such position and office permanently, at and for the salary of not less than five thousand dollars per annum" (Record, p. 4.) The Baltimore United Oil Company was an affiliation of the Standard Oil Company, and was incorporated under the general corporation law of the State of Maryland, December 15, 1877 (see certificate of incorporation, Record, p. 14). The plaintiff and defendant were both incorporators of said company, and named in the certificate as members of the board of directors to manage the affairs of the

company during the first year. From the minutes of a meeting of the directors, held December 18, 1877 (Record, p. 20), it appears that the defendant, who, as trustee, subscribed for 5,059 shares out of a total of 6,000 shares constituting the capital stock of the company, was elected president, and the plaintiff, who was the owner of 458 shares, was elected vice-president at a salary of $5,000.

This office of vice-president the plaintiff continued to hold—his compensation having been gradually increased by the Standard Oil Company to $15,000 per annum—until January 15, 1883, when the Standard Oil Company, which held five-sixths of the stock, having decided on a reduction of expenses and a change of management, a new board of directors was chosen, the plaintiff being left out of said board, and Mr. W. T. Poole was elected president in the place of Mr. Camden, and Mr. George H. Vilas was elected vice-president in place of the plaintiff (see minutes of stockholders' and directors' meetings, Record, p. 22). Mr. Vilas was elected, as appears from the testimony of that gentleman (Record, p. 50), to serve without salary. It further appears from the testimony of Mr. Camden (Record, pp. 39, 44) that the stock of the Baltimore United Oil Company, subscribed for by him as trustee, was subscribed for in behalf of the Standard Oil Company, which furnished the money and paid for it, and that it was immediately transferred over to the Standard Oil Company; and at the stockholders' meeting which displaced the plaintiff from the board of directors it was voted by the trustees who then held the stock for the Standard Oil Company, the defendant not being one of said trustees. (Testimony of John D. Archbold, Record, pp. 46, 47; of W. C. West, Record, p. 20.)

Prior to the formation of the Baltimore United Oil Company the plaintiff was engaged with his father and brother in carrying on the petroleum business in Baltimore city, and owned certain oil works in Baltimore county, under the firm name of C. West & Sons. In 1876–7 the Standard Oil

Company, which had also established itself in Baltimore city (J. N. Camden, pp. 36, 42), and was competing for the business done in that market, entered into negotiations with several of the local refiners and dealers with a view to get rid of competition and acquire a control of the business. Among others it entered into negotiations with the plaintiff's firm of C. West & Sons. These negotiations were conducted on the part of the firm by the plaintiff, sometimes in Baltimore, sometimes in New York, sometimes with Mr. Camden, at other times directly with Mr. Rockefeller, the president of the Standard Oil Company, or with Messrs. Archbold and Vilas, officers of the company, acting in conjunction with Mr. Camden. At one time they were entirely broken off, then subsequently resumed, and finally culminated, on the 15th of December, 1877, two days after the organization of the Baltimore United Oil Company, in a sale to that corporation of all the works, business, goodwill and successorship in the business of C. West & Sons, for the sum of $137,500 (in reality $150,000 , whereof $77,860 was paid in cash, and the balance agreed to be paid in two equal instalments in 30 and 60 days after said 15th of December, 1877.

This agreement, which was reduced to writing, and *is the only written evidence offered of the sale, or of any contract with plaintiff or his firm,* will be found in the Record, pp. 13, 14. To the consideration ($137,500) expressed in the written instrument, Messrs. Vilas and Archbold, who were present advising and assisting in the consummation of the arrangement, agreed, in behalf of the Standard Oil Company, to add $12,500, bringing up the consideration paid to the round sum of $150,000, demanded by the Messrs. West.

There is no suggestion or claim made that the two corporations, the Baltimore United Oil Company and the Standard Oil Company, have not fully complied with all their obligations as set forth in this contract. The present suit is brought not by Messrs. C. West & Sons, but by William C.

West individually, and not against either of the contracting companies, but against Johnson N. Camden individually.

In this written agreement there is not one word said upon the subject of an office or position of any kind, or at any rate of salary, to be provided for Mr. W. C. West in the Baltimore United Oil Company, the corporation which became the purchaser of and successor in the business of C. West & Sons. As stated, Mr. West was one of the incorporators of the new company, and was one of the persons named in the certificate, in accordance with the law of Maryland, which requires the persons who are to act as directors or managers for the first year to be so named, as one of the directors of the company. He subscribed for 458 shares of the company's stock, and was, by the board of directors, appointed vice-president, and his salary fixed at $5,000 per annum. When, five years later, he was removed, it was not until after he had been notified to that effect by officers of the Standard Oil Company in New York, who informed him of the company's desire to reduce expenses and to make a change in the management. It is a significant fact that when so notified, and in the interviews which he had upon the subject with that company's officers in New York, the plaintiff made no pretense that he had any agreement with anybody that he should be permanently retained as vice-president, or any rights that would be violated by his removal.

Mr. Archbold's testimony (Record, p. 48) upon this point is most explicit.

Q. You are quite sure that when Mr. West went on to New York at the time he was notified he was to be removed that he urged that he was very useful to the Company, and that they would make a mistake in parting with his services?

A. He urged the fact that he had been in the business from its inception—that sort of consideration only.

Q. He put it upon no ground of right at all?

A. He put it upon no ground of agreement.

Q. Did he put it on no ground of right?

A. He thought it would be equitable to continue him, and urged his relation with the Company.

Q. I want to get at the fact whether he urged that he had any right to stay there.

A. If you mean by right—obligation, I say no. He asserted no obligation in that respect.

Q. No obligation upon the part of the Company to have him continued?

A. No obligation on the part of the Company to have him continued, other than as a business consideration.

Q. Entirely independent of any right on his part to make the demand?

A. Yes, sir.

Q. He never told you he had any agreement with anybody that he should remain there?

A. He did not.

And Mr. West does not contradict or deny the testimony of Mr. Archbold.

Mr. West knew from the first and prior to the organization of the company, that the entire control of the management of the Baltimore United Oil Company and the disposition of its offices, rested with the Standard Oil Company, which owned 5,059 shares out of a total of 6,000 shares. He "knew when Mr. Camden subscribed to the stock of the new company as trustee, that he represented the Standard Oil Company" (his own testimony, Record, p. 30.) He knew that in all the negotiations which preceded and culminated in the sale of the business of C. West & Sons to the Baltimore United Oil Company, Mr. Camden acted, not for himself, but for the Standard Oil Company, and as its agent. After many attempts at evasion, and not until the intervention of the Court to compel a direct answer, he is forced to admit this (Record, p. 34):

Q. Did you not know that in the whole transaction you had with Mr. Camden, which resulted in the purchase of this property of your firm and in the agreement which you say was made with you, did you not know that he was in that whole matter acting as the agent of the Standard Oil Company, and that it was not his individual transaction at all? Did you not know it, now? Look at the jury and tell them.

A. I didn't know to what extent Mr. Camden was interested in the matter, but I did know this; that I made the arrangement with him personally and paid no attention to who his backers were.

Q. Now won't you answer the question? I will put it to you again.

THE COURT (interposing). Answer yes or no. The question calls for a direct answer.

WITNESS. I had reason to believe so, your Honor.

COUNSEL. Q. Did you not believe it? Did you doubt or disbelieve it?

WITNESS. At the time the deal was made with me?

COUNSEL. Yes, sir,

A. Well, I believed him to be for acting for it.

These facts being admitted, or proven beyond all question—

1. That the plaintiff knew that Mr. Camden was acting simply as the Agent of the Standard Oil Company, and not personally, or on his own account;

2. That the stock which Mr. Camden subscribed for in the Baltimore United Oil Company was owned by the Standard Oil Company;

3. That all offices in the management of the Baltimore United Oil Company were under the control and in the gift of the Standard Oil Company;

4. That it was no part of the contract with the Baltimore United Oil Company, or with the Standard Oil Company, that plaintiff should be appointed to or kept in any office—

upon what ground can the plaintiff claim that Mr. Camden is personally liable to him in damages, because in the exercise of its control, the Standard Oil Company failed to re-elect him or displaced him from the office of vice-president, at the end of five years?

The plaintiff's case resolves itself simply into this—into the naked assertion on his part, without any corroborating testimony, that, when the firm of C. West & Sons sold their plant and business to the Standard Oil Company, in fact,

to the Baltimore United Oil Company in name, for $150,000 (an excessive price according to Mr. Camden, Record, p. 38), over and above that consideration for the sale, there was another consideration in the private and individual promise of Mr. Camden, who was known to be acting solely as an agent in the premises, to the plaintiff individually, that the plaintiff should have a permanent position as vice-president of the new corporation, the Baltimore United Oil Company, at a salary of not less than $5,000 per annum. No reason whatever is assigned why Mr. Camden should have saddled himself individually with such an unusual and onerous obligation; it is sufficient to say that the defendant's denial of any such collateral or supplemental private and personal agreement is as explicit (Record p. 39) as the plaintiff's assertion that such an agreement was made.

The Instructions of the Court.

Upon this state of the evidence, the Court was asked to instruct the jury, and the case is presented here upon exceptions taken by the plaintiff to three prayers asked for in behalf of the defendant, which the Court granted, and which took the case from the jury, and also to the Court's refusal to grant the instructions asked for by the plaintiff.

The Instructions Granted.

The defendant's prayers which were granted will be found in the Record, pp. 53–55, being the 1st, 3d and 7th prayers. The case was tried before Circuit Judge Bond and District Judge Morris and a jury, and the defendant's 1st and 7th prayers were granted by the court, both judges concurring; the 3d prayer was granted by the circuit judge, the district judge not concurring. The opinion of the court, delivered by Judge Bond, is on pp. 55–57 of the Record. Defendant's 1st prayer, which was granted, was that if the jury

"— find that the alleged contract between the plaintiff and the defendant, that the said plaintiff should have per-

manent employment as an officer of the Baltimore United Oil Company, at a salary of not less than $5,000 a year, or as much as any other officer of said company received, was made in contemplation that the defendant was to be an officer of said company and control a majority of its stock; and that by the use of his official position, and of the control of said ownership of stock, he was to retain said plaintiff in office and fix his salary, as admitted by the said plaintiff, then their verdict must be for the defendant upon the issues joined in this case."

Defendant's 3d prayer, also granted, was that if the jury should

"— find that the defendant verbally promised the plaintiff, as part of the consideration for the execution by him of the contract offered in evidence, dated —— [intended to be filled in with actual date of written contract, December 15, 1877], that plaintiff should have permanent employment as an officer of the United Oil Company, at a salary of not less than $5,000 a year, or as much as any other officer of said company, and that plaintiff agreed that he would accept such employment and serve said company on those terms, the plaintiff cannot recover on such verbal contract, and their verdict must be for the defendant."

Defendant's 7th prayer, also granted, was that

"— the plaintiff has offered no evidence legally sufficient to sustain the allegations contained in his amended declaration, and is not entitled to recover in this action."

The amendment agreed to be treated as if incorporated in each of the counts of the plaintiff's original declaration will be found on pp. 6, 7 of the Record. It is an allegation in effect that the defendant, at the time of entering into the alleged agreement and undertaking to have the plaintiff appointed to and permanently retained in a lucrative office, represented himself as able to make good his said undertaking; and that down to and at the time of the plaintiff's removal from office the defendant continued to be able to secure the plaintiff's retention in his said office. The plaintiff's sole reliance was upon the use of Mr. Camden's influence as an officer of the company, and his control over the stock in the company held by the Standard Oil Company. He so testifies (Record, p. 33):

"He was to be president of the company, and I supposed he would remain there and continue me and keep me in the position as vice-president and general manager. If he was to be president and hold five-sixths of the stock, and continue to hold it, it was a surety that I should remain in the position."

The granting of the defendant's seventh prayer was therefore a natural corollary to the granting of the first prayer. Both rest upon the same legal principle.

Points of Law.

I.

The defendant's first and seventh prayers were properly granted. Out of such a hypothesis of facts as constitutes the plaintiff's case, no cause of action can arise. The agreement on the part of the defendant, on which the plaintiff relies and which the defendant denies—if proven—would be an illegal agreement—contrary to public policy—contrary to the duty which the defendant, an officer of the company, owed to the company itself and to other stockholders besides the plaintiff. If plaintiff and defendant had been public officers and the case was one of appointment to a public office under the government, state or federal, no question could arise. Why should any different rule be applied to the case of an office, or the fiduciary obligations of officers in a private corporation?

The plaintiff knew of the fiduciary relation which the defendant bore to the stockholders both of the Standard and the United Oil Companies. He dealt with him in that capacity. He knew, therefore, of the limitations imposed by law and public policy upon the power of the defendant to bind himself by any agreement as to his future action as a director, especially by an agreement to keep the plaintiff permanently in the position of vice-president of the company. After enjoying that position for five years, during which his compensation had been raised from $5,000 to $15,000 per annum, the plaintiff had no right to complain,

if the management of the Standard Oil Company or the controlling stock interest in the United Company, deeming a change of management and a reduction of expenses advisable, saw fit to displace him. The defendant had no right, and the plaintiff must have known that he had no right, to stipulate that no such contingency should happen and no such change be made.

If the office in question had been a public office, or plaintiff and defendant had been officers having duties to perform in which the government or the public had an interest, no doubt could exist as to the illegality of such an agreement as is alleged and sought to be made the basis of this suit.

Meguire vs. Corwine, 101 U. S. 108, 111.

The principle of public policy applied to that case has been declared by this court to be one of universal law, and applicable to the case of an agent of a foreign government serving without pay, and where it was contended the transaction would not be condemned by his own government or the law of his own country.

Oscanyan vs. Arms Company, 103 U. S. 261, 272.

It is a principle which has been declared to be equally applicable to the directors of a corporation "charged with duties of a fiduciary character to private parties," it being "the true policy of the State to secure fidelity in the discharge of all such duties."

Wardell vs. Railroad Co., 103 U. S. 651, 658.
Woodstock Iron Co.vs. Extension Co., 129 U. S. 643, 662.

In this last case (129 U. S., 643,) this Court cites with approval and quotes at length from the decision in Fuller vs. Dame, 18 Pick, 472, 483, one of the two cases cited and relied upon by Judge Bond in his opinion in the case at bar. The other case relied upon by the Circuit Judge, and which in its facts is even more nearly alike the case at bar, that of Guernsey vs. Cook, 120 Mass., 501, has since

been followed and reaffirmed, and its doctrine still further extended in—

Woodruff vs. Wentworth, 133 Mass., 309, 314.

In this case the agreement of a stockholder in a private corporation, for a consideration, to vote for a particular person as manager and to vote to increase the salaries of the officers, including that of the manager, was held void as against public policy; and the Court express a decided doubt whether the knowledge and assent of all the stockholders would cure the defect. In other words, it is not necessary that there should be fraud in fact to invalidate the agreement. As the Court below has put it in its opinion in the present case—

"We think this salutary rule is applicable in this case, notwithstanding the alleged contract was not corruptly made for private gain on the part of the defendant. There were other stockholders in the company. * * * * And it seems to us that it was certainly the right of those other stockholders *to have the defendant's judgment as an officer of the company exercised with a sole regard to the interests of the company.*"

The effect of the agreement alleged in this case would have been to make the defendant a *guarantor and insurer* of the plaintiff, against any possibility of removal or any reduction of salary below $5,000. It is obvious that a personal liability for damages in the case of the removal of a person whom he has guaranteed shall be kept permanently in office, might operate as powerfully upon the mind of a director, and prove as strong an inducement to act corruptly and improperly, and contrary to the true interests of the company and of the other stockholders, as the receipt of a bribe or any other private or pecuniary consideration. In addition to the cases already cited, the defendant relies upon—

Bestor vs. Watkin, 60 Ill., 138.
Holladay vs. Patterson, 5 Oregon, 107,

and other cases cited and approved by this Court in 129 U. S., pp. 659-662; and also upon—

Noel vs. Drake, 28 Kans., 265.
Forbes vs. McDonald, 54 Calif., 98.

II.

The third prayer of the defendant which was granted by a divided Court, is based upon the requirement of the Statute of Frauds relating to agreements not to be performed in one year from the making thereof. The law of Maryland is the same as the English statute upon the subject.

Kilty's Report, p. 241.
Alexander's Brit. St., p. 508.

It is also the law of the District of Columbia, and has been the subject of judicial construction by this Court.

The verbal agreement which is alleged to have been entered into by the defendant with the plaintiff, was to procure the appointment of the plaintiff to the office of vice-president of the Baltimore United Oil Company, and to keep him permanently in that position.

By the law of Maryland (1 Code Public Gen. Laws, Art. 23) under which the Company was incorporated by certificate (see Record p. 14) it is provided as follows:

"The stock, if any, property and concerns of any corporation, for whose creation provision is made in this article, shall be managed by such number of trustees, directors or managers, as its by-laws or charter shall prescribe, * * * and who shall, except the first year, be annually elected by the stockholders, where there are such." (1 Md. Code, P. G. L., art. 23, sec. 57.)

By section 54 of the same article of the Code, it is provided that any corporation formed under said law, shall have power

"— to appoint a president of the company from among the directors, trustees or managers, and to appoint such

officers and agents as the business of the corporation shall require; to allow them a suitable compensation, require security for the faithful discharge of their duties, and regulate the tenure of office of the said officers."

From the Record, p. 14, it appears that the plaintiff was a director named in the certificate of incorporation to act for the first year, and from the Record, pp. 30–1, it appears that he had been appointed by the directors vice-president at a salary of $5,000. The verbal agreement which plaintiff sets up, as having been entered into by defendant, was an agreement, in effect, that each year thereafter he should be annually re-elected or re-appointed by each successive board of directors, so required to be elected annually by the stockholders, as vice-president of the company at a salary of not less than $5,000. Clearly this was not an agreement which, within the contemplation of the parties was "to be performed in one year," or which *was capable of being performed* in one year. It was an agreement the performance of which was liable to be *defeated* and rendered impossible by various contingencies that might happen within one year, as *e.* g. the dissolution of the corporation, the forfeiture of its charter, or the death of the plaintiff himself. But the distinction between a contract which may be *completely performed*, according to the contemplation of the parties in one year, and one which is only performed in the sense that further performance has been rendered impossible, by a defeasance occurring within that time, has been clearly pointed out by this Court. "The possibility of a defeasance does not make it the less a contract not to be performed within the year."

Packet Co. vs. Sickles, 5 Wall. 580, 595.
McPherson vs. Cox, 96 U. S. 417.
Walker vs. Johnson, Ibid. 427.

And this doctrine is fully in accord with that of the best English cases, among which may be cited, in addition to